



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, OPB, CNL, MNDC, FF, O

Introduction

This hearing dealt with two related applications. One was the landlord's request for an order of possession based upon a 2 Month Notice to End Tenancy for Landlord's Use. The other was the tenants' application for an order setting aside the notice and granting the tenants a monetary order. As the parties and circumstances are the same for both applications, one decision will be rendered for both.

In his written material the landlord stated that he was seeking to end the tenancy on several grounds, including the fact that the tenants had an unapproved sub-tenant. The landlord was advised that before he could seek to end a tenancy on that ground he would have to serve the tenants with a 1 Month Notice to End Tenancy for Cause and be able to defend it in a hearing if it were challenged by the tenants. The hearing focused solely on the issues identified below.

Issue(s) to be Decided

- Is the agreement signed by the parties on June 2, 2014 valid and enforceable?
- If not, is the 2 Month Notice to End Tenancy for Landlord's Use dated June 16, 2014, valid?
- If so, what should be the effective date of the order of possession?

Background and Evidence

This fixed term tenancy commenced April 16, 2014. The fixed term ends on April 30, 2014. The monthly rent of \$1300.00 is due on the first day of the month. The tenants paid a security deposit of \$650.00 and a pet damage deposit of \$50.00. The tenants paid pro-rated rent for April.

Shortly after the start of this tenancy the landlord listed the property for sale. Within three weeks of listing the property he received an offer to purchase, which he accepted.

As of the date of the hearing all of the conditions in the offer have been removed. The possession date for the sale is September 1, 2014.

The landlord advised the tenants when he listed the property and when he sold the property.

On June 1 the landlord came to the rental unit and spoke with the female tenant. He told her the purchasers wanted to tear down the building and so they wanted vacant possession. He offered the tenants one month free rent and free moving boxes if they was agree to move out of the rental unit by August 31. He said he needed an answer in three days and left.

The tenants called TRAC, the Tenant Resource and Advisory Centre, for information and advice. They were told that tenants can ask for compensation for agreeing to end a fixed term tenancy agreement before the end of the term. The tenants agreed on what they would ask for and typed these terms up in the form of a simple agreement.

On June 3 the landlord came back to the rental unit, bringing a Mutual Agreement to End Tenancy form with him. Only the female tenant was at home. The two had a long discussion in which the tenant presented the rationale behind their requests. The tenant testified she told the landlord they had talked to TRAC; the landlord testified they told him they had talked to the Residential Tenancy Branch.

After about 45 minutes, the landlord went outside for 20 to 30 minutes. The tenants said the landlord was talking on the telephone during this time; the landlord said he was just thinking. The landlord testified that he was under considerable pressure as the purchaser was demanding that he respond to them within a very short period of time.

The landlord came back into the rental unit. By this time the male tenant had returned home. All three parties signed the agreement prepared by the tenants which provided for:

- A full reimbursement for the April, May and June rent;
- Free rent for July and August;
- \$500.00 to each tenant for moving expenses; and,
- The money to be paid to the tenants before the move-out date of August 31, 2014.

In addition to the above payments, the landlord agreed to pay the difference between the tenants' future rent and \$1300.00 until April 31, 2015.

The parties also signed the Mutual Agreement to End Tenancy prepared by the landlord. That agreement specified that the tenancy would end on August 31, 2014. The landlord testified that after the agreement was concluded he did not feel comfortable with it so he went to the Residential Tenancy Branch and a lawyer for information and advice. He came to the conclusion that he had been misled by the tenants and decided not to honour the June 3 agreement.

On June 16 the landlord gave the tenants a 2 Month Notice to End Tenancy for Landlord's Use and a letter saying the tenants had misled him by telling him they had obtained information from the Residential Tenancy Branch and that the proposal they had put forward represented instructions from the Branch. The letter went on to say that he only had to give two months notice and one month of free rent. He concluded with a demand for the July rent.

Included in the landlord's evidence is a document dated June 6, 2014. In it the purchasers ask the landlord to "give the present tenant(s) occupying the said property a 'Notice to End a Residential Tenancy', said notice to comply with all legal requirements of the Residential Tenancy Act of BC, and to provide for my/our taking physical possession of the premises on Sept 1, 2014."

The tenants subsequently received a letter from the landlord's lawyer dated June 17, 2014, declaring that as the agreement signed on June 3 was obtained by deception and fraud on their part it was not valid and the provisions of the *Residential Tenancy Act* applied to this situation.

The landlord testified that English is his second language and that this puts him at a disadvantage. He testified that he is employed as a draftsman. He testified that he is a generous and trusting person, which is why he relied on the tenants' statements that they had talked to the Residential Tenancy Branch and that the agreement presented to him on June 2 reflected his legal obligations.

The landlord filed written material, apparently not written by his lawyer, which was very clear. One statement is particularly interesting:

"While other tenants were gladly accepting the 2-month notice with one month free rental, unit 'A' renters presented an agreement, claiming they had gotten instructions from the Residential Tenancy Branch (RTB) to list all demands on the agreement, being a trusting person, I signed without much studying of the content."

On July 29, the landlord filed a copy of new Request to Seller, dated July 23, 2014. The wording is the same as the first request but with a new sentence added: "It is our intention to occupy the premises on September 1, 2014." There was no proof that this document had been served on the tenants filed with the document.

Analysis

The relevant sections of the *Residential Tenancy Act* are:

Section 49(5) which allows a landlord to end a tenancy if:

- a. The landlord enters into an agreement in good faith to sell the rental unit;
- b. All the condition on which the sale depends have been satisfied, and
- c. The purchaser asks the landlord, in writing, to give notice to end the tenancy on the ground that the purchaser, or a close family member of the purchaser (as defined by the legislation) intends in good faith to occupy the rental unit.

Section 49(2) specifies that the effective date of a 2 Month Notice to End Tenancy for Landlord's Use must be:

- a. Not earlier than two months after the date the tenant receives the notice;
- b. The day before the day in the month that rent is payable under the tenancy agreement; and,
- c. If the tenancy is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

The soonest that the landlord could end this tenancy by serving a 2 Month Notice to end Tenancy for Landlord's Use was April 15, 2015. If the landlord had talked to the Residential Tenancy Branch, telling them he had a fixed term tenancy agreement with his tenants, before signing the June 3 agreement they would have told him this.

The resulting legal reality was that if the landlord wanted the tenants to sign a Mutual Agreement to End Tenancy and end the tenancy early – in order to comply with the terms of his sale agreement – he was going to have to give the tenants sufficient inducement to get them to agree to do so. This was the information provided to the landlord by the tenants and it was an accurate statement of his legal situation. Whether the landlord thought the tenants had talked to the Residential Tenancy Branch or some other organization is irrelevant. The information was neither false nor misleading.

I find that the tenants did not take advantage of the landlord in the ensuing negotiations. Although English is the landlord's second language, his written and oral evidence was clear and serviceable. From the landlord's own written material it appears that this unit was not his only rental unit. He had some obligation to learn the applicable law before signing the agreements with the purchaser and the tenants. Any haste in signing the documents with the tenants was self imposed by the landlord. Prior to signing the

agreement the landlord could have taken the time to consult with the Residential Tenancy Branch or a lawyer.

The landlord argued there was no consideration given by the tenants for the promises he made in the June 3 agreement. The consideration is the tenants' agreement to end the tenancy before the end of the fixed term when not legally obligated to do so.

I find that the agreement signed by the parties on June 3 is valid and binding on the parties. If the landlord wants the tenants out of the rental unit by August 31 he must comply with the terms of the agreement. If he does not make the payments as specified, the tenants have no obligation to move and the Mutual Agreement to End Tenancy will be void and unenforceable.

In addition, I hold that the 2 Month Notice to End Tenancy for Landlord's Use is invalid. The written request provided by the purchaser to the landlord merely asks for physical possession of the rental unit – something that would be required before demolishing the building for example – it does not state that the purchaser intends in good faith to occupy the rental unit. As the notice does not comply with the requirements of section 49(5), it is set aside and is of no force or effect.

Even if there was proof that the late evidence filed by the landlord had been served on the tenants, and therefore something I could consider when making this decision, it does not change the outcome of this decision. The 2 Month Notice to End Tenancy for Landlord's use was based upon the June 6 request; not some subsequent document.

Before deciding to serve another 2 Month Notice to End Tenancy for Landlord's Use based upon the July 23 request the landlord and the purchaser should have a look at section 51(2) of the *Act*.

The tenants' application for a monetary order is dismissed on the grounds that it is premature. Their agreement does not require payment until August some day prior to August 31 and, if payment is not made as agreed upon, the tenancy continues.

As the tenants were substantially successful on their application they are entitled to reimbursement of the \$100.00 fee they paid to file it. A monetary order in this amount is granted to the tenants. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that court. Alternatively, if the tenancy does continue, pursuant to section 72 this amount may be deducted from any rent payment that becomes due to the landlord.

Conclusion

The agreement to end tenancy dated June 3, 2014 has been upheld and the 2 Month Notice to End Tenancy for Landlord's Use has been set aside.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 29, 2014

Residential Tenancy Branch