



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NO. 260 SEABRIGHT HOLDINGS LTD, DBA MARTELLO TOWER
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes O, OLC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- other remedies, identified as obtaining an order of possession based on the fixed term tenancy agreement, pursuant to section 55(2)(c); and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

This hearing also dealt with the tenants' application pursuant to the *Act* for:

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- other remedies, identified as an order that this tenancy continue on a month to month basis after the fixed term tenancy expires, pursuant to section 44(3).

The landlord's agent, JF ("landlord") and the two tenants, "tenant DB" and "tenant FB," attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The landlord's witness, "CA," testified at this hearing and both parties were given an opportunity to question and cross-examine the witness.

The landlord confirmed that he is the building manager for the rental building where the rental unit is located. The landlord confirmed that he had authority to speak on behalf of the landlord company as agent at this hearing. CA confirmed that she is the leasing manager for the landlord company named in this application.

The landlord testified that he served both tenants with two separate copies of the Landlord's Application for Dispute Resolution hearing package ("Landlord's Application") on January 28, 2015, by way of registered mail. The landlord provided two copies of Canada Post receipts and tracking numbers as proof of service with the Landlord's

Application. The tenants confirmed receipt of the Landlord's Application on February 6, 2015. Both tenants indicated that they both had an opportunity to review the Landlord's Application prior to this hearing. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the Landlord's Application.

Tenant FB testified that he personally served the landlord and CA with the Tenants' Application for Dispute Resolution hearing package ("Tenants' Application") on January 26, 2015. The landlord confirmed receipt of the Tenants' Application. The landlord confirmed that he had an opportunity to review the Tenants' Application prior to this hearing. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the Tenants' Application.

During the hearing, the landlord made an oral request for an order of possession.

Issues to be Decided

Is the landlord entitled to an Order of Possession based on the tenancy agreement?

Are the tenants entitled to an order that the landlord comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order that this tenancy continue on a month to month basis after the fixed term tenancy expires?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord testified that this fixed term tenancy began on March 1, 2014. Monthly rent in the amount of \$1,300.00 is payable on the 1st day of each month. A security deposit of \$650.00 was paid by the tenants and the landlord continues to retain this deposit. The tenants continue to reside in the rental unit.

The landlord seeks an order of possession for the tenants to vacate the rental unit as per the fixed term tenancy agreement for this tenancy. The landlord is also seeking to recover the \$50.00 filing fee for this Application from the tenants. The tenants seek an order that this tenancy continue on a month to month basis, as per an oral agreement with the landlord.

The written tenancy agreement, which is on a standard Residential Tenancy Branch form, indicates that this tenancy ends on February 28, 2015, and that the tenants must vacate the rental unit at this time. Both the landlord and tenant FB acknowledge that they personally initialled beside this fixed term provision, as required by the tenancy agreement. Tenant DB denies initialling beside the fixed term provision. The landlord and CA both testified that they saw tenant DB sign beside the fixed term provision and that he used a different colored pen than tenant FB, which is visible on the tenancy agreement. CA and the landlord company are both named as landlords in the tenancy agreement. CA testified that she signed at the end of the entire tenancy agreement, personally and on behalf of the landlord company, on February 13, 2014. Both tenants testified that they signed at the end of the entire tenancy agreement on February 13, 2014. CA and the landlord testified that they were both present during the signing of the tenancy agreement. The tenants stated that the landlord was not present during this signing, only CA was.

Both tenants indicated that CA did not explain the tenancy agreement to them or advise them of the fixed term end date. The tenants stated that they are both ill and have multiple medical concerns. The tenants indicated that they were rushed during the tenancy agreement signing by CA, while CA and the landlord denied this fact. The tenants indicated that CA was only worried about collecting rent money from the tenants and that the tenants were one day late in signing their agreement. The tenants stated that they did not fully read the tenancy agreement, particularly the fixed term tenancy clause requiring them to vacate the rental unit by February 28, 2015. CA stated that she explained each page of the tenancy agreement to both tenants, particularly the fixed term end date provision, and that both tenants initialled beside this provision. CA stated that she gave both tenants the opportunity to read the entire tenancy agreement and believes that she spent approximately 45 minutes to 1 hour with the tenants for this appointment. CA stated that tenant FB was very familiar with the tenancy agreement but she insisted that he review the agreement carefully, regardless.

Tenant FB testified that he read the addendum agreement that was provided at the same time as the tenancy agreement. This addendum was not provided with either party's application. Tenant FB indicated that he took this addendum aside, read it carefully and specifically questioned CA about it. Tenant FB cited a specific clause from the addendum during the hearing. This clause related to a charge of \$120.00 that could be deducted from the tenants' security deposit at the end of the tenancy, if the tenants did not clean their drapes. Both parties recall tenant FB asking CA if the tenants could have blinds installed in their rental unit, to avoid this drape cleaning charge.

The tenants indicated that they never would have signed a tenancy agreement for one year because they intended to stay longer. Both tenants indicated that they get along well with their neighbours, the landlord's loud noise complaints against them were untrue and unwarranted, and they enjoyed living in their rental unit. Both tenants stated that their tenancy agreement should be extended and proposed a "3 month probation period" for the landlord to test whether any other occupants complained about noise coming from the tenants' rental unit.

The tenancy agreement states under the "rent" section that the "tenant/landlord may enter new fixed term lease." The landlord stated that this is an optional clause. The landlord testified that he has chosen not to enter into a new lease with both tenants, due to various complaints against both tenants.

The tenants testified that they were told by CA, at the time of the tenancy agreement signing, that the tenancy would be renewed on a month to month basis after the fixed term expired. CA denies this fact. CA stated that she told both tenants that if there were no problems during their tenancy, their tenancy agreement could be renewed. CA and the landlord both indicated that there have been multiple problems during this tenancy and so they wish to end the tenancy.

The landlord advised the tenants that their lease was expiring by way of a letter, dated January 7, 2015. The tenants acknowledged receiving this letter on January 25, 2015. The letter indicates that the fixed term tenancy expires on February 28, 2015, inquiring as to the details when the landlord can show the rental unit to prospective tenants and inquiring as to the details when the tenants will require the elevator for their move. Tenant FB testified that he spoke with the landlord after receiving this letter and was told that the fixed term lease was expiring. The tenant stated that he advised the landlord at this time, that both tenants did not intend to vacate the rental unit at the end of this fixed term period.

Analysis

Section 44 of the *Act* indicates the ways in which a tenancy can end:

44 (1) A tenancy ends only if one or more of the following applies:

...

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

...

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Section 55 indicates how an order of possession may be obtained by a landlord:

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

...

(c) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term.

Residential Tenancy Policy Guideline 13 states the following with respect to co-tenants (emphasis added):

This Guideline clarifies the rights and responsibilities relating to multiple tenants renting premises under one tenancy agreement.

A tenant is the person who has signed a tenancy agreement to rent residential premises. If there is no written agreement, the person who made an oral agreement to rent the premises and pay the rent is the tenant. Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

All parties acknowledge signing the entire tenancy agreement at page 6, on February 13, 2014. Tenant FB initialled beside the fixed term tenancy provision which states that both tenants must vacate the rental unit at the end of the fixed term. Although tenant DB denied signing the fixed term provision, his explicit consent is not required. As per Residential Tenancy Policy Guideline 13, the tenants are co-tenants who are renting the same rental unit under the same tenancy agreement. Accordingly, both tenants are bound by the same terms of the tenancy agreement, including the fixed term provision which requires both tenants to vacate the rental unit by February 28, 2015.

The tenants stated that they were rushed into signing the tenancy agreement and that CA did not explain any information to them. The landlord and CA are not required to

explain the tenancy agreement to both tenants. Both tenants signed the agreement indicating that they agreed with all of the terms contained therein. Tenant FB specifically initialled a separate area of the tenancy agreement, on page 2 of the tenancy agreement, indicating that he understood the fixed term provision. The Tenant FB even took the time to take the addendum aside, read through it carefully and ask CA specific questions about drapes, blinds and cleaning; both parties specifically recalled this event, almost one year later. Therefore, I find that both tenants had the opportunity to read carefully through the tenancy agreement and ask any questions, as they did with the addendum. The tenants had the option not to sign the tenancy agreement, if they disagreed with its terms. The tenants acknowledged that they were not forced by the landlord to sign the tenancy agreement.

CA indicated that she was not aware that tenant FB was ill during the signing of the agreement. Tenant FB did not provide any medical documentary evidence that he was ill during the signing of the agreement, which prevented him from properly comprehending the terms of the tenancy agreement. Tenant FB indicated that he became ill after signing the tenancy agreement.

Although there was an option to enter into a new lease, and CA acknowledged to both tenants that the lease could be renewed if there were no problems during the tenancy, the landlord has chosen not to enter into a new lease. This was merely an option in the tenancy agreement that the landlord has chosen not to exercise. The landlord provided written notice to both tenants by at least January 25, 2015, more than one month in advance of the fixed term end date of February 28, 2015, that the landlord did not intend to renew the tenants' lease.

For the above reasons and in accordance with the fixed term tenancy agreement, I find that the landlord is entitled to an **Order of Possession against both tenants, effective at 1:00 p.m. on March 31, 2015**. During the hearing, the landlord testified that despite the fixed term tenancy ending on February 28, 2015, he is willing to wait until March 31, 2015, in order for the tenants to vacate the rental unit. Given the testimony from both tenants that they are currently suffering from multiple health concerns and their rental unit is in close proximity to their local hospital, I find that this delayed possession date is warranted.

For the reasons cited above and as this tenancy is ending, I dismiss the tenants' application in its entirety as I find that the landlord has not contravened the *Act*, regulation or tenancy agreement, and there is no need to issue any orders against the landlord in this matter.

As the landlord was successful in its application, I find that it is entitled to recover the \$50.00 filing fee from the tenants.

The landlord continues to hold the tenants' security deposit of \$650.00. Although the landlord did not apply to retain the tenants' security deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$50.00 from the tenants' security deposit in full satisfaction of the monetary award for the filing fee. No interest is payable over this period.

Conclusion

I grant an Order of Possession to the landlord **effective by 1:00 p.m. on March 31, 2015**, a copy of which must be served upon the tenants as soon as possible. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to retain \$50.00 from the tenants' security deposit in full satisfaction of the monetary award for the filing fee.

The landlord is required to deal with the remainder of the tenants' security deposit, in the amount of \$600.00, in accordance with section 38 of the *Act*.

The tenants' entire application for an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement and for an order that this tenancy continue on a month to month basis after the fixed term tenancy expires, is dismissed.

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: February 12, 2015

Residential Tenancy Branch

