



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OLC, O and FF

Introduction

This hearing was convened in response to cross applications.

On January 21, 2015 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for “other” and to recover the fee for filing an Application for Dispute Resolution. On the basis of information provided in the Application for Dispute Resolution I find that it is abundantly clear that the Landlord is seeking an Order of Possession. I therefore find it reasonable to amend the Landlord’s Application for Dispute Resolution to include an application for an Order of Possession.

The Landlord and the Tenant agree that on January 21, 2015 the Landlord’s Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to reply upon as evidence were posted on the door of the rental unit. The Landlord stated that there were two photographs in her evidence package, which show the evidence package posted on the door on January 21, 2015. The female Tenant stated that the Tenant did not receive these two photographs.

All documents the Tenant acknowledged receiving were accepted as evidence for these proceedings. The two photographs the Tenant did not acknowledge receiving were not accepted as evidence. I determined that there was no need to consider an adjournment for the purposes of serving the two photographs to the Tenant, as there is no dispute that the documents were posted on the door on that date.

On January 26, 2015 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement and for “other”. At the hearing the Tenant explained that the Tenant is asking that the Tenant be permitted to withdraw the Notice to End Tenancy they served to the Landlord or that the parties sign a new tenancy agreement.

The Landlord and the Tenant agree that on January 26, 2015 the Tenant’s Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to reply upon as evidence were placed through the Landlord’s mail slot. All documents the Landlord acknowledged receiving on January 26, 2015 were accepted as evidence for these proceedings.

Legal Counsel for the Tenant stated that a cover letter and two letters of reference were faxed to the Residential Tenancy Branch on February 02, 2015, which were personally served to the Landlord on February 02, 2015. The Landlord acknowledged receipt of these letters. The parties were advised that I did not have those letters in my possession at the time of the hearing. I note that those letters were in my possession by the time this decision was rendered, although they were not relevant to my decision.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Has the Tenant ended this tenancy?

Is the Landlord entitled to an Order of Possession?

Is the Landlord required to enter into a new tenancy agreement with the Tenant?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on October 27, 2013 and that the tenancy was for a fixed term of six month months, after which it continued on a month to month basis. The parties agree that rent of \$700.00 is due by the first day of each month.

The Landlord and the Tenant agree that on November 25, 2014 the Tenant served the Landlord with written notice of the Tenant's intent to vacate the rental unit on January 19, 2015. A copy of this notice was submitted in evidence by both parties. The copy submitted by the Landlord is signed by both Tenants and the copy submitted by the Tenant is unsigned.

The female Tenant stated that on January 02, 2015 she handed the Landlord an envelope which contained a rent cheque and a letter dated January 01, 2015. In the letter, which was submitted in evidence by the Tenant, the Tenant informs the Landlord that the Tenant wishes to ``cancel our notice that was to be effective 19 Jan 2015``. The female Tenant stated that the Landlord removed the rent cheque from the envelope without reading the letter and returned the envelope to the Tenant.

The Landlord stated that when the Tenant gave her the rent cheque for January she did not give her a letter or an envelope. She stated that she did not receive this letter until she received it as evidence for these proceedings.

The female Tenant stated that on December 20, 2014 the Tenant also informed the Landlord, via text message, that the Tenant wished to cancel their notice to end tenancy. She stated that the parties communicated by texted on several occasions.

The Landlord initially stated that she never communicated with the Tenant by text message. She subsequently stated that she did receive and read the aforementioned text on December 20, 2014, but she did not respond to it.

The Landlord and the Tenant agree that the parties did not mutually agree to continue the tenancy after the Landlord received the Tenant's written notice to end the tenancy.

The male Tenant stated that they want to enter into a new tenancy agreement with the Landlord and are willing to pay a 5% rent increase and an additional \$50.00 for utilities. The Landlord stated that she does not wish to enter into a new tenancy agreement with the Tenant.

The Tenant was not permitted to give evidence regarding their conduct during this tenancy or the reasons they wish to remain in the rental unit, as those issues are not relevant to the issue in dispute.

Analysis

On the basis of the undisputed evidence, I find that the Landlord and the Tenant entered into a fixed term tenancy agreement; that the fixed term of the tenancy agreement has expired; and that the tenancy agreement became a periodic tenancy at the end of the fixed term.

Section 44(1)(a) of the *Residential Tenancy Act (Act)* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, and 50 of the *Act*.

Section 45(1) of the *Act* stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

On the basis of the undisputed evidence, I find that on November 25, 2014 the Tenant served the Landlord with written notice of the Tenant's intent to vacate the rental unit on January 19, 2015. I find that this Notice served to end the tenancy in accordance with section 44(1)(a) of the *Act*.

As a notice to end tenancy served pursuant to section 45 of the *Act* must end the tenancy on a date that is not earlier the day before the day in the month the other period on which the tenancy is based, and rent is due on the first day of each month, I find the Tenant did not have the right to end this tenancy on January 19, 2015.

Section 53 of the *Act* stipulates that if the effective date stated in a notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of the notice to end the tenancy was January 31, 2015.

There is nothing in the *Act* that authorizes a party to withdraw a notice to end tenancy once it has been served. Residential Tenancy Branch Policy Guideline 11 stipulates that a landlord or tenant cannot unilaterally withdraw a notice to end tenancy. The guideline further states that the notice may be withdrawn or abandoned only with the consent of the party to whom it is given or with the express or implied consent of both parties. I concur with these guidelines.

Even if I were to conclude that the Landlord received written notice that the Tenant wished to withdraw their notice to end tenancy, I would find that the written notice did not serve to cancel the notice to end tenancy that was served on November 25, 2014. In reaching this conclusion I was heavily influenced by the undisputed evidence that the Landlord did not agree to allow the Tenant to withdraw the notice to end tenancy that was served on November 25, 2014 and that there is no evidence to show the Landlord implied the tenancy would continue. As the Landlord did not agree to continue the tenancy and the Tenant cannot unilaterally withdraw a notice to

end tenancy, I find that this tenancy ended on January 31, 2015 in accordance with the notice to end tenancy that was served on November 25, 2014.

As this tenancy ended on January 31, 2015 and the Tenant has not vacated the rental unit, I find that the Landlord is entitled to an Order of Possession.

There is nothing in the *Act* that authorizes me to direct a landlord to enter into a new tenancy agreement with a tenant. I therefore am unable to grant the Tenant's application for an Order requiring the Landlord to enter into a new tenancy agreement.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing an Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on February 28, 2015. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim of \$50.00 in compensation for the filing fee for an Application for Dispute Resolution and I grant the Landlord a monetary Order for this amount. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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 05, 2015

Residential Tenancy Branch

