



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order against the landlord for compensation, for not providing the tenant with adequate notice to end the tenancy and for not acting in good faith.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be Decided

Was the rental term a fixed term that required the tenant to move out at the end of the term? Did the landlord serve a valid notice to end tenancy? Is the tenant entitled to compensation?

Background and Evidence

The tenancy started on September 01, 2013 for a fixed term of one year, ending August 31, 2014. The monthly rent was \$1,380.00 payable on the first of each month. A copy of the tenancy agreement signed by both parties was filed into evidence. A term of the tenancy agreement states

“At the end of this fixed length of time, the tenancy ends and the Tenant must move out of the residential premises, except where a new rental agreement or extension has been made at least one month prior to expiry. Tenants have option to extend another 12 months tenancy upon mutual agreement.”

Both parties agreed that on July 28, 2014, the landlord sent an email to the tenant informing him that if he was interested in continuing the tenancy after the end date of August 31, 2014, a new tenancy agreement had to be signed. On July 30, 2014, the tenant replied by email to inform the landlord that he was interested in exercising the option to extend the tenancy.

Later that same day the landlord let the tenant know that she had decided not to renew the tenancy agreement as she was going to put the rental property up for sale.

The tenant stated that he believed that the landlord had acted in bad faith but since he had moved from another Province, he was not familiar with the *Residential Tenancy Act of BC* and therefore did not know that he had an option of filing an application for dispute resolution, if he had a disagreement with the landlord. The tenant moved out on the end date of the fixed term - August 31, 2014.

On September 19, 2014, the tenant communicated with the landlord by email and asked her for compensation in the amount of two months' rent. The reason for the request was that the landlord had ended the tenancy for the purpose of selling the rental unit and had not provided the tenant with at least two months' notice. The tenant agreed that he had not received a formal notice to end tenancy for landlord's use of property, but based his claim on the email dated July 30, 2014.

Analysis

The tenant stated that he understood that because the landlord intended to sell the rental unit, he was entitled to compensation pursuant to a section 49 notice to end tenancy for landlord's use of property.

The tenant's claim for compensation will be determined on the circumstances that led to the end of tenancy. I must decide whether the tenancy ended pursuant to a term in the tenancy agreement or pursuant to a notice to end tenancy for landlord's use of property. If the tenant received a section 49 notice to end tenancy and the tenancy ended pursuant to this notice, then the tenant is entitled to compensation under s.51 of the *Act*.

In this case, the only notice to end tenancy from the landlord was in the form of an email informing the tenant that the tenancy would not be extended and that he would have to move out on the last day of the fixed term, as per the tenancy agreement.

Section 52 of the *Residential Tenancy Act* addresses notices to end tenancy and states that in order to be effective a notice to end tenancy must be in writing and must be in the approved form. In this case, the notice to end tenancy by email does not comply with section 52 as it was not in the approved form. Therefore, I find that this notice was not valid and was not a section 49 notice to end tenancy for landlord's use of property.

Section 44 (1) (b) of the *Residential Tenancy Act* states that a tenancy ends if 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.

Based on the signed tenancy agreement, I find that the tenancy was a fixed term tenancy which would end on August 31, 2014, unless the tenancy was extended by mutual agreement and a new tenancy agreement was entered into by August 01, 2014.

In this case, I find that the parties did not enter into an agreement to extend the tenancy. I accept the tenant's argument that in an email dated July 28, 2014, the landlord implied that she was interested in extending the tenancy. However the landlord clearly informed the tenant in an email dated July 30, 2014 that she would not be extending the tenancy. Therefore the tenant was informed prior to August 01, 2015 that the tenancy would end on August 31, 2014. Accordingly, I find that the tenancy ended pursuant to a term in the tenancy agreement.

Since the tenant was not served with a notice under section 49 (landlord's use of property), I find that the tenant is not entitled to compensation under section 51 of the *Act*. Since the tenant has not proven his case, he must bear the cost of filing his application.

Conclusion

The tenant's application 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: May 01, 2015

Residential Tenancy Branch