



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O

Introduction

This was a hearing with respect to an application by the tenant. The hearing was conducted by conference call. The tenant and the landlord's representative called in and participated in the hearing. The tenant was represented by a legal advocate, who joined the hearing shortly after it commenced. The tenant brought the application seeking a remedy because he claimed that the landlord has been attempting to improperly evict him.

Issue(s) to be Decided

Is the tenant entitled to some form of remedy in the nature of a declaration with respect to his tenancy?

Background and Evidence

The rental property is an apartment building in Vancouver. The tenancy began in January 2105. According to the landlord's representative the tenant pays monthly rent of \$630.00 for a furnished room with some housekeeping services provided. The tenant testified that he purchased an air conditioning unit for his apartment in May. He said that the landlord gave him a letter stating that he was not allowed to use an air conditioner in the rental unit and that he would have to move. He said that since then the landlord has attempted to evict him from the rental unit. The tenant submitted a copy of a document that the landlord gave to him on June 22, 2015. The document was titled: "**Accepted Notice**" and it said:

Your move out date and time is as follows:

Date June 24, 2015 by 12 noon. Or any time before this date.

You agreed upon moving in that our in/out dates follow that of income assistance days, this will be upheld upon moving out. You never paid any deposit for your room, or keys, so you will not be returned any money.

The document gave a list of move-out instructions and then provided as follows:

IF YOU ARE UNABLE TO REMOVE ALL OR PART OF YOUR BELONGINGS BY NOON, WE WILL ENTER AND PACK AND STORE FOR TEN (10) DAYS SAFELY.

AFTER THAT WE WILL DISPOSE OF WHATEVER IS LEFT.

THANK YOU FOR PROVIDING US WITH A SMOOTH TRANSITION FOR THE TENENT MOVING INTO YOUR SPACE THE DAY YOU LEAVE.

(reproduced as written)

The form was not signed or acknowledged by the tenant; it contained what was referred to as a: "**Management signature**" and was dated June 22/2015.

The landlord's representative said at the hearing that the tenant purchased an air-conditioner for his unit. The landlord told him that he was not allowed to operate the air-conditioner because the rental property is a 100 year old building with 50 other units and the air-conditioner cannot be safely used on the building's aging electrical system. The landlord's representative testified that the tenant said that if he could not use the air conditioner then he was going to move. The landlord's representative said that the landlord accepted the tenant's "verbal notice" and gave him the landlord's form accepting his notice. The landlord said that the tenant has refused to move and the landlord has had to find temporary accommodation for the new tenant who was to occupy the rental unit. The landlord's representative said at the hearing that the landlord has other reasons for wanting the tenant to move that amount to cause for ending the tenancy.

The tenant provided a written submission and his representative noted at the hearing that the landlord has insisted that he move and has threatened to remove his belongings for him if he does not leave voluntarily. The tenant had to seek the assistance of the Vancouver Police to dissuade the landlord from taking any action before this hearing. In the document submitted as part of the tenant's evidence package, he requested monetary compensation for the landlord's attempts to illegally evict him. At the hearing I advised the tenant and his advocate that I would not consider his request for monetary compensation because this was not a claim included in his original application and the tenant did not amend his application to include such a claim. The landlord has not been properly notified that the tenant is seeking to advance a monetary claim.

The tenant disputed the evidence of the landlord's representative concerning the operation of the air conditioner. He said it is a new, efficient appliance and he has used it without causing any electrical problems in the building.

Analysis

The *Residential Tenancy Act* provides by section 52 that, in order to be effective, a notice to end a tenancy must be in writing and must be signed and dated by the landlord

or tenant giving the notice, must give the address of the rental unit and must state the effective date of the notice.

The tenant acknowledged at the hearing that he told the landlord's representative that if he could not use his air conditioner then he would have to move. He never specified a date when he planned to move and never gave the landlord any form of written notice that he intended to move.

The landlord is not entitled to "accept" a verbal notice and treat such a statement as a binding commitment compelling a tenant to move on a date specified by the landlord.

The landlord's form of: "Accepted Notice" is of no force or effect and may not be used to compel or coerce the tenant to move. The landlord may not take any steps to evict the tenant based on the document. If the landlord contends that it has cause to evict the tenant then it must serve the tenant with a proper Notice to End Tenancy in the form provided by the Residential Tenancy Branch and the tenant will be at liberty to apply to dispute any such Notice given by the landlord.

If the tenant intends to pursue a monetary claim, he will have to file a new application for dispute resolution and explicitly state the remedy he is seeking.

Conclusion

The landlord's Notice is of no force or effect. The tenancy is a continuing tenancy and it may only be ended in accordance with the provisions of the *Residential Tenancy Act*.

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*.

July 17, 2015

Residential Tenancy Branch

