



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC, & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was personally served on the Tenant by posting on June 10, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other by mailing, by registered mail to where the other party resides. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling a one month Notice to End Tenancy dated June 10, 2015 and setting the end of tenancy for July 31, 2015?
- b. Whether the tenant is entitled to an order cancelling a one month Notice to End Tenancy for end of Employment?
- c. Whether the tenant is entitled to an Tenant's Order for Possession?
- d. Whether the landlord is entitled to an Order for Possession?
- e. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

On April 10, 2015 JKSH Ltd. and SSB entered into a one year fixed term tenancy agreement with MB that provided that the tenancy would start on May 1, 2015, continue for one year and

end on April 30, 2016. The rent was \$2200 per month payable in advance on the 3rd day of each month. The tenant paid a security deposit of \$1100.

The parties also signed a handwritten "Addendum" which provided that the landlord agreed to sell the property to MB by May 29, for a set price. The parties disagree as to when the tenant must exercise this option to purchase. The landlord says it must be exercised by 2015. The tenant produced another version in which 2015 was cross out and replaced by 2016.

The landlord takes the position that the tenant failed to exercise the option and he has the right to show and sell it to other prospective buyers.

On July 2, 2015 the tenant filed a claim in the Supreme Court of British Columbia alleging breach of contract, misrepresentation, fraud, fraudulent misrepresentation, deceit, breach of trust and unjust enrichment. They also filed a Certificate of Pending Litigation was filed against the property .

The one month Notice to End Tenancy dated June 10, 2015 alleges the tenant or person permitted on the property by the tenant has "seriously jeopardized the health or safety or lawful right of another occupant or the landlord" or breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

Landlord's Evidence:

The landlord's agent testified as follows:

- On May 30, 2015 he posted a Notice of Entry on the door for a showing for May 31, 2015
- On June 2, 2015 the "For Sale" sign was removed by the Tenant
- On June 2, 2015 the landlord posted a sign on the tenant's door that they refrain from removing the "For Sale" sign.
- On June 2, 2015 he received a call from the tenant telling him he should not have entered the garage.
- The tenant's threatened the agent with releasing their dog.
- On May 31, 2015 he tried to enter the premises but the door locks had been changed.

- On June 3, 2015 the landlord's agent put the "For sale" sign on the lawn but it was removed.
- On June 4, 2015 the landlord served a Notice demanding the tenant provided he landlord with a key.
- Keys have not been returned.
- The landlord produced a letter from KC, another tenant in the basement suite dated July 23, 2015 but it does not relate to the grounds set out in the Notice to End Tenancy.

The affidavit sworn by the tenant deposes to his attempt to complete the sale of property and the refusal of the landlord. The affidavit of the tenant denies that the locks have been changed.

Jurisdiction:

Policy Guideline #27 includes the following:

5. TRANSFER OF AN OWNERSHIP INTEREST

If the relationship between the parties is that of seller and purchaser of real estate, the Legislation would not apply as the parties have not entered into a "Tenancy Agreement" as defined in section 1 of the Acts. It does not matter if the parties have called the agreement a tenancy agreement. If the monies that are changing hands are part of the purchase price, a tenancy agreement has not been entered into.

Similarly, a tenancy agreement is a transfer of an interest in land and buildings, or a license. The interest that is transferred, under section 1 of the Acts, is the right to possession of the residential premises. If the tenant takes an interest in the land and buildings which is higher than the right to possession, such as part ownership of the premises, then a tenancy agreement may not have been entered into. In such a case the RTB may again decline jurisdiction because the Acts would not apply.

In the case of a tenancy agreement with a right to purchase, the issue of jurisdiction will turn on the construction of the agreement. If the agreement meets either of the tests outlined above, then the Acts may not apply. However, if the parties intended a tenancy to exist prior to the exercise of the right to purchase, and the right was not exercised, and the monies which were paid were not paid towards the purchase price, then the Acts may apply and the RTB may assume jurisdiction. Generally speaking, the Acts apply until the relationship of the parties has changed from landlord and tenant to seller and purchaser.

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The provincial court does not have jurisdiction over residential tenancy disputes except in respect of enforcement of monetary orders issued by the RTB. The Supreme Court, however, may by order, assume jurisdiction over a residential tenancy matter, in which

case the RTB loses jurisdiction over that dispute. If the dispute is linked substantially to a Supreme Court action then the RTB may decline jurisdiction.

The tenancy agreement provides for the payment of rent. The Addendum purports to give the tenant/purchaser an option to purchase the property for a set price. This is not a lease to purchase agreement where part of the rent goes to the purchase price. As a result I determined that I have jurisdiction to consider matter relating to the residential tenancy of the parties. The enforceability of the Addendum and the issue of whether one party has breached another is a matter that must be determined by the Supreme Court of British Columbia.

Tenant's Application to Cancel the one month Notice to End Tenancy dated June 10, 2015:

I dismissed the tenant's application to cancel a Notice to End Tenancy for End of Employment as no such notice has been given. I dismissed the tenant's application for a Tenant's Order for Possession as the tenant is in possession and such an order is not necessary.

After carefully considering all of the evidence I determined the landlord has failed to establish sufficient cause to end the tenancy. The landlord is objecting to the refusal of the tenant to give his real estate access to show the rental unit and the refusal to allow the real estate agent the right to put a "For Sale" sign on the property. Section 29 of the Residential Tenancy Act provides as follows:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Section 29(b) requires that the purpose for entering must be reasonable. The showing of the property to a prospective tenant is reasonable if the Option to Purchase is no longer valid. However, in my view it is not reasonable if the tenant has until the end of May 2016 to exercise an option to purchase or if the landlord is wrongfully preventing the tenant from taking steps to exercise that option. Similarly, it not reasonable to put a "For Sale" sign on the property if a landlord has given the tenant an option to purchase that is still enforceable. Those issues are before the Supreme Court of British Columbia. I determined the landlord has failed to prove the tenant has changed the locks.

As a result I ordered that the Notice to End Tenancy dated June 10, 2015 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining

I determined the Residential Tenancy Branch has jurisdiction to consider matters relating to the tenancy and the obligations of the parties to comply with the provisions of the Act. The parties are encouraged to get legal assistance so they understand their obligations under the Act.

Landlord's Application::

For the reasons set out above I ordered that the one month Notice to End Tenancy be set aside. As a result I dismissed the landlord's application for an Order for Possession and the recovery of the cost of the filing fee..

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: August 23, 2015

