



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing.

Neither of the parties submitted to the Residential Tenancy Branch a copy of the 2 month notice to end tenancy (the "Notice"), nor did they submit a copy of their written tenancy agreement. However, as the parties agreed on the content of both of those documents, I relied on this agreement and did not require them to submit the documents after the hearing.

Issue to be Decided

Should the Notice be set aside?

Background and Evidence

The parties agreed that the tenancy began on November 1, 2013 and was set to run for a 1 year fixed term which expired on October 31, 2014. They further agreed that the written tenancy agreement provided that upon the expiry of the fixed term, the tenancy would become a month-to-month tenancy. They further agreed that on or about July 17, the landlord served the Notice on the tenant. The Notice states that the landlord or a close family member intend to occupy the unit.

The tenant does not dispute that the landlord intends to use the rental unit for the purpose stated on the Notice, but claims that he is protected by a fixed term tenancy. The tenant provided a copy of a text message between him and the landlord's agent in which on November 4, 2014 (4 days after the expiry of the original fixed term) the agent stated, "I told u that we will extend the contract for another year right?" to which the tenant replied, "Yes u did." The tenant claimed that he and the landlords had

discussions about extending the agreement for a further 2 years and that it was his understanding that they had agreed to a 2 year extension.

The landlord denied having made such an agreement and testified that they were thinking about agreeing to entering into another fixed term, but changed their mind when they realized that they would need the rental unit to house family members.

The parties agreed that the tenant did not pay rent for the month of September but paid rent for the month of October.

Analysis

The written tenancy agreement specifically states that at the end of the original fixed term on October 31, 2014, the tenancy would continue as a month-to-month tenancy. The representation of the landlord on which the tenant wishes to rely to prove that he is protected by another fixed term was texted to the tenant on November 4, which is after the tenancy had already become a month-to-month tenancy.

The parol evidence rule is a principle of contract law under which a written agreement cannot be altered by a verbal agreement. Although the tenant claimed that the parties simply never got around to signing a new agreement, I find it more likely that their conversations were an agreement to agree, which is not contractually binding on the parties. I find that the parol evidence rule prevented the parties from verbally agreeing to change the written contract and that the landlord's reluctance to enter into a written contract shows that the landlord did not agree to enter into a new fixed term tenancy.

I find that the tenancy is a month-to-month tenancy and that the Notice is effective to end the tenancy. I therefore dismiss the tenant's application.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Although the landlord asked for an order of possession effective 2 days after service, I have determined that it is more appropriate to end the tenancy on October 31 for several reasons. The effective date of the Notice was on September 30 and had already passed by the time the hearing was convened and therefore the effective date could not be complied with. The landlord had led the tenant to believe that they were

entertaining entering into a fixed term tenancy and it was on the basis of this communication that the tenant came to the belief that he was protected by a fixed term tenancy. The tenant's claim was not frivolous or designed to obtain an extension, but was based on a sincere belief which was reinforced by the landlord's actions. The tenancy will end on October 31 and the order of possession is effective on that date.

Conclusion

The tenant's application is dismissed and the landlord is granted an order of possession.

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: October 07, 2015

Residential Tenancy Branch

