



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BEACON HILL VANTURES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes mndc, o, opb, ff

Introduction

The landlord requests an Order of Possession, on the basis of an expired fixed term tenancy. The landlord also seeks a Monetary Order for overholding rent, and to recover the \$50.00 filing fee.

A director for the landlord, and the landlord's legal counsel attended the hearing, which was also observed by an articling student. The female tenant attended the hearing, and acknowledged having been served with notice of the hearing. The male tenant did not attend the hearing. I accept the landlord's evidence that the male tenant was served with the same materials by way of registered mail, and that he is deemed to have received same by virtue of section 90 of the Residential Tenancy Act.

Issues to Be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order for overholding rent, and the filing fee?

Background and Evidence

Information was provided by the landlord that the parties entered into a fixed term tenancy agreement on September 29, 2013, to begin December 15, 2013 and end November 30, 2015. The agreement specified that at the end of the fixed term, the tenants must move out of the rental unit, and the tenants and landlord specifically initialed this clause of the agreement. The tenants refused to vacate after the end of the specified term, and have paid no rent permitting them use and occupy the premises.

The tenant does not dispute the above, but alleges that in addition to the tenancy agreement the parties entered into contract of purchase and sale. The tenants have paid deposits to the landlord pursuant to that agreement, and considers that this agreement supercedes the tenancy agreement. The tenant requested at the hearing that I not make the orders sought by the landlord, but rather provide the tenants a 12 month redemption period. The tenant notes that she had contacted the landlord in the past regarding repair issues, and that the landlord was offered further rent cheques for December, 2015 and January, 2016, which the landlord refused to accept.

The landlord replied that in fact a contract of purchase of sale had been entered into, and contemplated that the completion of the sale would coincide with the ending of the

fixed term tenancy. However, the tenants have breached the contract of purchase and sale, and the resolution of that issue lies with the Supreme Court of British Columbia. The landlord submits I have no authority to deal with the contemplated purchase and sale. The landlord agrees that rent cheques were offered for December and January, and these were not accepted because the landlord did not wish to reinstate the tenancy. The landlord prefers that I order that overholding rent be paid.

I was provided by the landlord with a copy of the written tenancy agreement. Neither party provided me with a copy of the Contract of Purchase and Sale.

Analysis

Landlord's counsel submits that my jurisdiction is limited to matters as between landlords and tenants, and does not extend into the realm of a Contract of Purchase and Sale. This submission is accurate in cases where such purchase agreement does not include provisions that intersect with the tenancy agreement. In this case I am required to make this jurisdictional determination in the absence of a copy of the Contract of Purchase and Sale. I am unable to verify, therefore, whether the agreements overlap in any respects. For example, I cannot verify whether the Contract of Purchase and Sale entitles the tenant to automatic possession of the premises, notwithstanding the clause in the tenancy agreement that the tenants must vacate at the expiry of the fixed term on November 30, 2015. Further, I cannot verify whether rent payments made under the tenancy agreement are also payments towards the purchase price. Given that the tenant is alleging benefit under the Contract of Purchase and Sale, it was incumbent upon her provide me with a copy of the agreement. In the absence of same, I must make my decision on the basis of the verbal submissions about the Contract of Purchase and Sale.

I accept the tenant's testimony that a considerable amount of money has been advanced as deposits towards their anticipated purchase of the home. That testimony alone does not demonstrate that the terms of the tenancy agreement do not apply, or are superceded in some way by the purchase contract. On the contrary, the tenant references monthly payments to the landlord as rental payments, and notes that she contacted the landlord about repairs to the rental unit. I am provided with no basis upon which to discount any provisions of the tenancy agreement. As such, I consider on a balance of probabilities that the tenancy agreement, as written is binding as between the parties. My ruling proceeds accordingly, and I have no authority to order a "redemption period" as requested by the tenant, at term typically used in the context of foreclosures, but not in residential tenancies.

My review of the written tenancy agreement confirms that a fixed term tenancy was entered into, that monthly rent of \$2,500.00 was payable, that the tenancy would end November 30, 2015, and that the tenants agreed to vacate on November 30, 2015. This latter portion of the tenancy agreement was initialled by the parties, demonstrating they knew or should have known of the requirement to vacate. By remaining, the tenants are in breach of the terms of the tenancy agreement. The landlord has therefore established a right to possession, by virtue of section 44 (b) of the Residential Tenancy Act.

The tenants have remained in the premises beyond November 30, and as such have become “overholding tenants” as defined in section 57 of the Residential Tenancy Act. Section 57(3) permits a landlord to claim compensation from overholding tenants for any period that the tenants occupy the rental unit after the tenancy ends. The landlord is therefore entitled to the claimed compensation equal to 2 months rent (December and January), which totals \$5,000.00. As the landlord is successful in this application, I also award recovery of the \$50.00 filing fee

Conclusion

Pursuant to Section 55(2)(c) of the Residential Tenancy Act, I issue an Order of Possession effective 48 hours following service upon the tenants. Should the tenants fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

The tenants are also ordered to pay the landlord \$5,050.00, representing the compensation for the overholding period, and recovery of the landlord’s 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: January 27, 2016

Residential Tenancy Branch

