



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

This is an application brought by the tenant requesting an Order for the landlord to comply with the act, regulation, or tenancy agreement.

Some documentary evidence and written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

The issues are:

- Whether or not the tenant has the option to unilaterally exercise an option to renew the lease for one year.
- Whether the landlord has the right to end the tenancy with a two month Notice to End Tenancy.
- Whether, if the tenancy is renewed for one year, the rent must remain the same or whether it can be increased.

Background and Evidence

This tenancy began on July 1, 2014 as a fixed term tenancy with an expiry date of June 30, 2016; however there was an addendum to the tenancy agreement which, at clause number 10, states "Option to renew for another year. Based on same rent.

The tenant testified that, when they signed the tenancy agreement, they wanted a guarantee that they would be able to stay in the rental unit for three years if needed and that is why the

option to renew was part of the addendum, which was initialed by both the landlord and tenant allowing for an option to renew for a third year.

The tenant further testified that the rental unit sold in 2015 and even though the purchaser was informed of the option to renew for a third-year, the purchaser on January 6, 2016 served the two month Notice to End Tenancy for landlord use with an end of tenancy date of June 30, 2016.

The tenant further testified that they had informed the landlords of their intent to exercise their option to extend the lease for third-year; however the landlord is arguing that they are required to vacate on June 30, 2016 and that they, the tenants, cannot unilaterally exercise the option to renew the lease.

The tenant further argued that on the addendum, since it states the option to renew is based on the same rent, the landlord isn't unable to raise the rent for that third-year and they believe the landlord must rent to them for third-year at the same rent of \$4600.00 per month.

The tenants are therefore requesting an Order that the landlords comply with the addendum to the tenancy agreement, and allow this tenancy to continue for a third year at a rent of \$4600.00 per month.

The landlord's agent has argued that the tenant entered into a two-year fixed term tenancy agreement ending on June 30, 2016 with the option to continue the lease on a month-to-month basis or another fixed length of time.

The landlord's agent further testified that since the landlord and tenant have not been able to come to a new agreement on a fixed length of time the landlord has served the tenant with a two month Notice to End Tenancy for landlord use of property, effective June 30, 2016, as the landlord wants to move into the rental unit.

The landlord's agent further argued that clauses 9 of the addendum to the tenancy agreement contradicts the tenancy agreement itself because the tenancy agreement states that at the end of the fixed term the tenancy may continue on a month-to-month basis or another fixed length of time, whereas the clause 9 of the addendum to the tenancy agreement states that the tenant must vacate the property by 1 PM on June 30, 2016.

The landlord's agents also argued the clause 9 contradicts section 44(3) of the Residential Tenancy Act which states:

If, on the date specified at the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement on a month-to-month tenancy on the same terms.

The landlord's agent therefore argues that since clause 9 contradicts both the tenancy agreement and the Residential Tenancy Act, it is not enforceable, and since the parties have not come to an agreement to extend the tenancy, this agreement becomes a month-to-month tenancy and under a month-to-month tenancy the landlord is able to end the tenancy with a two month Notice to End Tenancy for landlord use.

The landlord's agent further argues that the tenant cannot unilaterally exercise the option to renew for a third-year, it must be a mutual agreement between the landlord and the tenant, especially since clause 9, and clause 10 contradict each other with clause 9 requiring the tenant to vacate on June 30, 2016, and clause 10 granting an option to renew for another year.

The landlord's agent further argued that clause 10 also contradicts the Residential Tenancy Act when it states "based on the same rent" because the Residential Tenancy Act allows the landlord to raise the rent every 12 months.

The landlord's agent therefore argues that the landlord has complied with the Residential Tenancy Act since the parties have not come to a mutual agreement to extend the tenancy, and therefore the landlord does have the right to end the tenancy with a two month notice.

Analysis

Section 13 of the Residential Tenancy Act states:

13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

Therefore it is the landlord's responsibility to ensure that the tenancy agreement is clear and complies with the Residential Tenancy Residential Tenancy Act, and if a clause in the tenancy agreement is unclear, the benefit of any doubt as to the interpretation of that clause must go to the tenant.

In this case, although clause 9 states that the tenant must vacate the property on June 30, 2016, clause 10 gives an option to renew the lease for another year and it is my finding that if the tenant chooses to exercise the option given under clause 10 they have the right to do so, as there is nothing in the addendum that states that both parties must agree to exercise the option.

The tenant has informed the landlord that they do intend to exercise the option of renting the unit for third-year and therefore, although the landlord can give a Notice to End Tenancy for landlord use, the effective date of that notice would not be until the end of the third-year of the tenancy.

I do not, however, accept the tenants argument that there is an agreement to keep the rent at \$4600.00 for that third-year. On the tenancy agreement itself, under box 3(a) it states:

The tenant will pay rent of \$4600.00 each month to the landlord on the first day of the rental period, which falls on the first day of each month **subject to rent increases given in accordance with the RTA-** (my emphasis).

Therefore, even though clause number 10 states, **Option to renew for another year. Based on same rent**, it is my finding that this only sets out what the base rent was at the beginning of the tenancy; it does not put any limitations on the landlord's right to increase the rent, if the rent increase is given in accordance with the Residential Tenancy Act.

Conclusion

Pursuant to section 62(3) of the Residential Tenancy Act, I Order that the landlord comply with the addendum to the tenancy agreement and allow the tenants to exercise their option to extend the tenancy for a third year. This tenancy will therefore continue until June 30, 2017 at which time, pursuant to section 53 of the Residential Tenancy Act, the tenants must vacate the rental unit pursuant to the Notice to End Tenancy that was given for landlord use.

As stated above, I have found that the applicants have not met the burden of proving that there was an agreement to keep the rent at \$4600.00 for that third-year. Therefore pursuant to Sections 40 through 43 of the Residential Tenancy Act the landlord has the right to increase the rent if a notice of rent increase is given in accordance with the 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*.

Dated: March 03, 2016

Residential Tenancy Branch

