



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FF, O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72; and
- an "other" remedy.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord admitted service of the tenant's dispute resolution package. The tenant admitted service of the landlord's evidence and the 2 Month Notice.

The tenant's "other" remedy and the request for an order requiring the landlord to comply with the Act, regulation or tenancy agreement is an order that the landlord recognize and comply with the terms of the purported fixed-term tenancy agreement.

Issue(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession? Is the tenant entitled to an order requiring the landlord to comply with the Act, regulation or tenancy agreement? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy began 1 May 2011. The parties entered into a written tenancy agreement on 6 April 2011. Monthly rent of \$1,250.00 is due on the first. The landlord continues to hold the tenant's security deposit in the amount of \$600.00.

The tenant testified that she informed the landlord of the tenant's intent to find a sublet for six months. The tenant testified that she agreed to keep the landlord informed of the tenant's progress. The tenant and subtenant entered into an oral agreement that the subtenant would rent the rental unit from 1 November 2015 to 30 April 2016. The tenant testified that she informed the landlord that a past sublet would be subletting the rental unit from 1 November 2015 to 30 April 2016. The tenant informed the landlord of this agreement in her email of 9 September 2015. The tenant then entered into a tenancy agreement abroad.

The landlord testified that he has given the tenant permission to sublet the rental unit. The landlord testified that these sublets were subject to the terms of the original tenancy agreement. The landlord testified that the tenant and her subtenant do not have a written tenancy agreement. The landlord testified that in December his son asked to move into the rental unit. The landlord advised the tenant by email of his intent to issue a 2 Month Notice. The landlord testified that he gave the tenant adequate notice. The landlord testified that the subtenant has agreed to vacate the rental unit.

The landlord served the 2 Month Notice on 17 January 2016. The 2 Month Notice was dated 10 January 2016 and set out an effective date of 31 March 2016. The 2 Month Notice set out that it was given as the rental unit is to be occupied by the landlord or close family member.

The landlord submits that the terms of the tenancy are governed by the original tenancy agreement and that there are no other agreements in place. The landlord denies that there is a fixed-term tenancy agreement.

The tenant submits that by agreeing to the sublet for the period 1 November 2015 to 30 April 2016, the landlord and tenant have entered into a fixed- term tenancy agreement for that period.

I was provided with a copy of the tenancy agreement. There is only one written tenancy agreement for this tenancy. The agreement sets out that it is a “one-year lease and then on a month-to-month basis...” The tenancy agreement has two changes to the text of the agreement. Both changes have been initialled by the parties. Neither change affects the term of the agreement.

Analysis

Section 12 of the Act sets out that the “standard terms” are terms of every tenancy agreement. “Standard terms” is defined in section 1 of the Act:

"standard terms" means the standard terms of a tenancy agreement prescribed in the regulations;

Subsection 13(1.1) of the *Residential Tenancy Regulation* (the Regulation) sets out that the terms established in the schedule are prescribed as the standard terms. Clause 1(2) of the Schedule to the Regulation sets out that any change or addition to the tenancy agreement must be agreed to in writing and initialed by both the landlord and the tenant and failure to comply means that the change is not enforceable.

The parties did not make any changes to the original written tenancy agreement in writing and initialled by both parties that changed the term from the original term of one year and then on a month-to-month basis. Accordingly, any alterations purportedly made by way of the email exchanges are not enforceable. On this basis, I find that at the time the landlord issued the 2 Month Notice the tenancy was a month-to-month or “periodic” tenancy.

If the tenant wished to secure her tenure at the rental unit she should have entered into a fixed-term tenancy agreement in writing and signed or initialled by both parties. Further, at the time the tenant purported to enter into the subtenancy, she was assigning an interest greater than the one she had herself. This is not permitted at law. The subtenancy cannot function to grant the tenant more rights than she herself had under her tenancy agreement.

Pursuant to subsection 49(3) a landlord may end a tenancy by providing a 2 Month Notice where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Close family member includes a child of the landlord.

The landlord testified that he intends for his son and his son's family to occupy the

rental unit. No evidence was provided by either party that indicate the landlord is ending the tenancy for any other purpose.

On the basis of the evidence before me I find that the landlord has proven that he intends, in good faith, for his son (and family) to occupy the rental unit. Consequently, the landlord has grounds to end the tenancy under section 49.

Pursuant to subsection 49(2) of the Act, the landlord may end the periodic tenancy with two months' notice and effective a day before the day in the month that rent is payable under the tenancy agreement. The landlord provided notice 17 January 2016. The earliest effective date for this notice is 31 March 2016. The landlord has provided proper notice under the Act.

For these reasons, I find that the 2 Month Notice served 17 January 2016 was validly issued.

Subsection 55(1) of the Act sets out that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Section 52 of the Act reads:

In order to be effective, a notice to end tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45(1) or (2) [tenant's notice], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

The 2 Month Notice complies with the requirements set out in section 52 of the Act. In accordance with subsection 55(1) of the Act, I issue the landlord an order of possession effective 31 March 2016.

As the tenant has not been successful in her application, she is not entitled to recover her filing fee from the landlord.

Conclusion

The tenant's application is dismissed.

The landlord is provided with a formal copy of an order of possession effective 31 March 2016. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: March 07, 2016

Residential Tenancy Branch

