



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KAIMANSON HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, LRE

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the Application) made by the Tenants for the Landlords to comply with the *Residential Tenancy Act* (the “Act”) and to suspend or set conditions on the Landlords’ right to enter the rental unit.

An agent for the company Landlord, the Landlord, and both Tenants appeared for the hearing. However, only the Landlord, the Landlord’s agent and one of the Tenants provided affirmed testimony during the hearing.

The Landlords’ agent confirmed receipt of the Application and his documentary evidence. The Tenant confirmed receipt of the Landlords’ documentary evidence. The hearing process was explained to the parties and they had no questions about the proceedings. However, the Tenant explained that he had a brain injury and struggled to remember things. The Tenant was informed that I would guide him slowly and carefully through the process and ensure that he understood and confirmed his understanding of the proceedings and evidence throughout the hearing. In addition, the second Tenant named on the Application was present to give further support and guidance.

At the start of the hearing, the Landlord explained that the Tenant was in breach of a fixed term tenancy agreement that ended on February 29, 2016 after which the Tenant was required to vacate the rental unit. Based on this, the Landlords’ agent requested an Order of Possession. However, the Landlord was informed of the provisions detailed under Section 55(2) (c) of the Act which states that a landlord may request an Order of Possession if the tenancy agreement is a fixed term tenancy and Tenant is required to vacate the rental suite at the end of the fixed term. However, this part of the Act is very clear in that such a request can only be made by **making an Application**. There was no Application before me from the Landlord. Therefore, I was unable to grant the Landlord an Order of Possession under these circumstances.

The Tenant was asked to present his Application and he confirmed that this tenancy was governed by a written signed tenancy agreement, provided into evidence by both parties, where they had both initialed agreeing that the tenancy would end on February 29, 2016 and the Tenant would vacate the rental unit.

The Tenant stated that the Landlord had failed to give him sufficient written notice to end the tenancy and that when they had a discussion regarding continuing the tenancy the Landlord started to change the terms and conditions of the existing agreement. The Tenant also stated that the Landlord was attempting to evict him because of unsupported alleged disturbances and unpaid utilities which he has paid.

The Landlord confirmed that the Tenant had not been issued any legal notice pertaining to these issues but they had issued the Tenant with written notice on February 3, 2016 advising that the tenancy was not going to be renewed or continued after the fixed term was due to end.

The Tenant was informed that pursuant to Section 44(1) (b) of the Act, there was no legal requirement for the Landlord to provide any reason, written notice, or a certain period of time to end the tenancy as the terms of the written agreement stipulated when and how the fixed term was to end. Therefore, the Tenants were in breach of the signed written tenancy agreement and were now overholding the tenancy. As a result, the Tenant asked the Landlords for some more time to vacate the rental unit. The Landlords considered the Tenants' situation and agreed to mutually end the tenancy.

Settlement Agreement

Pursuant to Section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

The parties agreed to end the tenancy on **April 30, 2016** which gives the Tenants sufficient time to vacate the rental suite and find new accommodation. The Tenants are still responsible to pay rent for March and April 2016 and the Landlord will be cashing the Tenant's rent cheque for March 2016 effective after this hearing.

In order to give effect to the above agreement, the Landlords are issued with an Order of Possession which is dated effective at 1:00 p.m. on April 30, 2016. This order may be enforced **only** if the Tenants fail to vacate the rental suite by the agreed date and time.

Copies of this order are attached to the Landlords' copy of this decision and may be enforced in the Supreme Court of British Columbia as an order of that court. This agreement is legally binding and does not affect the parties' rights to other remedies under the Act.

The parties confirmed their voluntary agreement to resolve this matter by way of mutual agreement both during and at the conclusion of the hearing.

Conclusion

In relation to the tenancy ending, there are no grounds for me to order the Landlord to comply with the Act, regulation, or tenancy agreement. The parties mutually agreed to end the tenancy on April 30, 2016. As the tenancy is ending shortly, the Tenants' Application to suspend or set conditions on the Landlords' right to enter the rental unit is now a moot issue. The Tenant's Application is dismissed without leave to re-apply. This file is now closed.

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 23, 2016

Residential Tenancy Branch