



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FF

Introduction and Preliminary Matter

This hearing convened as a result of the Tenant's Application for Dispute Resolution filed March 21, 2016 wherein the Tenant sought an Order pursuant to section 62(3) that the Landlord comply with the *Residential Tenancy Act*, the *Regulations*, or the residential tenancy agreement and an Order pursuant to section 72 for recovery of the filing fee.

Both parties appeared at the hearing, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to an Order that the Landlord comply with the tenancy agreement such that the original tenancy will continue beyond August 31, 2016?
2. Should the Tenants recover their filing fee?

Background and Evidence

The Tenant G.B. testified that the Tenants rent the entire house as well as a converted garage which doubles as a suite which the Tenants rent to a subtenant. Introduced in evidence was a copy of the residential tenancy agreement. Monthly rent was noted as \$3,300.00 payable on the 1st of the month.

The tenancy agreement provided that the tenancy was for a 2 year fixed term tenancy beginning on September 1, 2014 and continuing until August 31, 2016.

Although the parties checked off the section which provided that the tenancy would continue on a month to month basis following the fixed term (clause 2(b)(i) of the residential tenancy agreement), they also initialled the box which indicates the Tenants would be expected to move out of the residential unit at the end of the fixed term (clause 2(b)(ii) of the residential tenancy agreement).

The only other section of the tenancy agreement which deals with the term of the tenancy is section 14(3) which is included in the clause dealing with ending the tenancy and provides as follows:

14. ENDING THE TENANCY

- 3) If this is a fixed term tenancy and the agreement does not require the tenant to vacate at the end of the tenancy, the agreement is renewed as a monthly tenancy on the same terms until the tenant gives notice to end a tenancy as required under the *Residential Tenancy Act*.

The Tenant testified that the Landlords listed the house for sale in early November 2015. G.B. testified that shortly after listing the home the Landlord informed the Tenants that she wished to take the property off the market and extend the tenancy.

The Tenants provided in evidence email communication between the parties. I find the following passages to be relevant to the issue before me:

In an email dated November 3, 2015 at 7:19 p.m., the Landlord sent an email to the Tenant G.B. wherein she wrote as follows:

"G. my desire is to have you and B. stay for the next few years. I will take the house off the market when I hear from you. Thanks."

On November 3, 2015 at 9:44 p.m. the Tenants replied as follows:

"Thank you F. B. and I talked it through and it is our desire to stay as well.

As you and I discussed this morning we are happy to do a 2 year extension on the current contract. In other words its basically changing the date on the current contract from ending on august 31, 2016 to now ending on August 31, 2018. Is that we are agreeing to?

*Cheers,
G."*

On November 4, 2015 at 7:46 a.m. the Landlord replied as follows:

"Yes, that is the plan. I will have to contact my realtor after 9am. I will also get back to you on the freezer etc..."

On December 21, 2015 the Landlord wrote as follows:

"Hi G.,

Sorry for the delay, but Christmas and all that good stuff.

In review of our discussion:

We will keep the rent at \$3300 per month for the property [rental address] that you are presently leasing...

The present lease is ending at the end of August 2016.

We will sign a new one year lease with the same conditions as the previous lease.

Rent of \$3300 for the whole house with your open to rent out the suite and lawn care is your responsibility.

That will take us to the end of August 2017. At that time, the lease will convert to a month to month which will be your option to stay longer than your desired time of August 2018 if you wish. We can discuss that then. I will agree to sign the new lease before the present one has ended. Let me know if you are in agreement and I will then draw it up.

Have a very Blessed Christmas and a wonderful New Year with all your family G.

Sincerely

F.”

The Tenants replied on December 23, 2015 at 10:06 a.m. as follows:

“Thanks for the details F.

I have a couple minor questions on this but looks like basically (apart from dates) what we discussed.

I will call later today and then we can wrap this all up and enjoy the holidays.

Cheers,

G.”

On January 25, 2016 at 7:59 a.m. the Tenant sent an email to the Landlord as follows:

“F...I just realized I never pressed sent on this email. I wrote it at Christmas time..so sorry and very embarrassing.

We should probably do up the paperwork on the extention.

G

Hi F.

Wow what a busy crazy holiday season I am having.

Lets go ahead on these terms and make this formal. The only questions I had as per my last email) was to define what you meant by all of R.'s duties. I just want to be clear on this one so there are no undefined expectations.

- *I am not sure what the exact agreement you had with him was, but from what we see, he cut lawn, edged the front trim and blew the grass off the driveway and walkways.*
- *B and I already do all the weeding and gardens, plus I already do lawn fertilizer. We also already to pruning on smaller trees and trimming back*

bushes and lower level plants. We get rid of all the trimmings and tree pruning, pus I power wash everything once a year.

So as mentioned wanted this to be clear on what you meant by “all that was included in R. the previous gardeners duties”. I hope the above definitions help

The only other suggestion is for you to still hire someone to do once year outside maintenance project (i.e. large tree trimming or lawn air-ration in spring, etc.). These are projects I cannot do as they require special equipment and would help keep the property safe and looking good.

That’s it. We are off to the Oregon coast for a week, so will be back at on the Jan 4th.

Happy New Year,

G.

PS Still looking for suite rental. We’ve had 15+ people through the suite but no takers yet. Strange, but it will come together soon I am sure.”

Moments later, at 8:00 a.m. on January 25, 2016 the Tenant sent another email to the Landlord as follows:

“The last comment about not finding a rental person yet is obviously old news as you know we found one.”

The Landlord responded on January 28, 2016 at 10:16 a.m. as follows:

“Sounds great G. Have fun in Oregon.”

Further email correspondence between the parties dealt with the Tenants providing to the Landlord post-dated cheques, an invoice from the gardener, the water bill and the parties agreement that they would use an online lease agreement to formalize the terms of their agreement to extend the rental term.

The Tenant testified that they began acting on the agreement. They began taking care of all the gardening duties and found a sub tenant. On December 31, 2015 the Tenants

sent an email to the Landlord confirming that they found a subtenant for the suite by the name of B.R.

Introduced in evidence was a copy of the Residential Sublease Agreement between the Tenants and B.R., the subtenant. This document was dated January 2, 2016.

The Tenant testified that they provided post-dated cheques to the Landlord's bank for the months March 2016 to August 2017.

The Tenant testified that on March 10, 2016 the Tenants received a call from the Landlord's real estate agent, G.L., who stated that the Landlord had put the property back on the market. Apparently G.L. also informed the Tenants that the tenancy was ending on August 31, 2016.

The Landlord testified as follows.

She stated that the Tenants moved into her rental home in September 2014. She confirmed that she then listed the house for sale in November 2015 subject to the tenancy to August 31, 2016.

She then stated that she phoned the Tenant, G.B., and he informed her that the tenant in the suite had moved out. She claimed that she did not agree to this sub-tenancy and that she understood that they had a family friend living in the suite.

The Landlord further testified that G.B. told her that the subtenant moved out and they could not rent it out while it was on the market and could not afford the rent without a subtenant. She stated that she then took the property off the market.

The Landlord then testified that she agreed to the sublease. She also stated that she wanted to be a part of the discussions yet she had not been informed of anything further than the name of the subtenant.

The Landlord denied that there was any agreement between the parties that the tenancy would continue for a fixed term until at least August 2017 following which it would continue on a month to month basis.

The Landlord stated that they discussed the issue back and forth on the telephone and by email. She said they despite their discussions they did not reach a binding agreement. She claimed that the Tenant still had "questions", and they had not agreed to all the terms of the extended tenancy.

The Landlord also stated that she did not have cheques from the Tenants to August 2017; rather, they were in until August 2016. She then stated that she has no way of knowing whether cheques beyond August 2016 were provided as she understood the Tenants provided the post-dated cheques directly to her bank.

The Landlord testified that she decided to put the house on the market because she did not agree to the terms noted on the draft agreement.

The Landlord submitted that the parties needed to sign the contract for it to be legally binding. She claimed that they were not in agreement with respect to the gardening duties, the sub-tenancy, and the length of the term. The Landlord further submitted that she was not happy with the Tenants' sublease, she did not know when the subtenant moved in and did not have a copy of the sub-tenancy agreement, until the Tenants submitted their evidence in this proceeding. She stated that she sent several emails to the Tenants voicing her concerns over the sublease. Notably, none of those emails were in evidence.

The Landlord further testified that the sale of the rental home is subject to end of the Tenants' lease which she stated was August 2016. She further stated that she is trying to ensure that the new owners are willing to rent to the Tenants.

In brief reply, the Tenant testified that the Landlord only made an issue with the sub-tenancy when she decided to sell the house. He stated that he gave her a copy of the original sublease and they have always been forthright in communicating with her about the subtenancy.

Analysis

The original tenancy agreement between the parties was for a fixed term ending August 31, 2016. The Tenants allege this agreement was extended to August 31, 2018. The Landlord submits that while discussions occurred, the agreement was not formalized in writing and therefore not enforceable.

Section 1 of the *Residential Tenancy Act* provides as follows:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Policy Guideline

Accordingly, a tenancy agreement does not have to be in writing to be enforceable.

After careful consideration of the evidence submitted, as well as the testimony of the parties, I find that the parties agreed to a continuation of the tenancy to August 31, 2018. I make this finding for the following reasons.

The email communication between the parties confirms the Landlord offered to extend the tenancy by way of email dated November 3, 2015 sent at 7:19 p.m. Shortly thereafter, at 9:44 p.m., the Tenants accepted the Landlord's offer; in this email, the Tenant, G.B., asked the Landlord to confirm the end date of the tenancy as August 31, 2018. The next day, at 7:46 a.m., the Landlord confirmed the end date of August 31, 2018.

On December 21, 2015 the Landlord sent a further email confirming the fixed term was to end August 31, 2017 with a month to month tenancy following thereafter and beyond August 2018 if the Tenants so decided. She confirmed that rent was to continue at \$3,300.00 per month, the Tenants would take over the lawn care on the property, and the Tenants were permitted to rent out the suite, provided that they informed the Landlord of the name of the Tenant and only rented to one person, not more. In this email, the Landlord further confirmed that the current lease would end at the end of August 2016 and the parties would enter into a new tenancy agreement at that time.

On December 23, 2015 the Tenants confirmed their agreement to the Landlord's proposal regarding the extended tenancy. On January 25, 2016 G.B. sent a further email confirming their agreement and providing information to the Landlord as to the expected gardening duties.

On January 28, 2016 the Landlord responded to the January 25, 2016 email as follows: "Sounds great G..."

The communication between the parties confirms that they began acting on the terms of their agreement. For instance, on December 31, 2015, and in furtherance of the terms of the parties' agreement, the Tenants informed the Landlord that they had entered into a sub-lease with a Tenant, B.R. As well, the Tenants provided post-dated cheques to the Landlord's bank, as had been the practice, and as they were instructed by the Landlord by way of her email dated February 10, 2016. In doing so, the three essential elements of an enforceable contract exists: offer, acceptance, and consideration (in the form of payment by post-dated cheque).

In all the circumstances I find the parties had a meeting of the minds with respect to the continuation of the tenancy. They agreed the Tenants would have exclusive possession of the rental unit, that rent would continue at \$3,300.00 per month, and they would be permitted to sublease the suite to a single sub-tenancy. They also agreed in principle regarding the gardening duties; namely that the Tenants would take over this responsibility. While they also discussed the possibility of hiring a third party to deal with large tree trimming or spring lawn maintenance, I do not find this to be fatal to a finding that a binding contract existed.

Accordingly, I find that the parties agreed to an extension of the tenancy to include a fixed one year term from August 31, 2016 to August 31, 2017 following which the tenancy would continue on a month to month basis. The terms of the tenancy are as contained in the original tenancy agreement, with the addition that the Tenants are responsible for the gardening duties and are permitted to sub-lease the suite to a single sub-tenant.

Pursuant to section 13 of the *Residential Tenancy Act*, I Order that the Landlord prepare a tenancy agreement on these terms by no later than June 30, 2016.

Conclusion

The parties reached a verbal agreement that the tenancy would continue for a fixed 1 year term from August 31, 2016 to August 31, 2017 following which the tenancy will continue on a month to month basis. The Landlord is to prepare a tenancy agreement on these terms by no later than June 30, 2016.

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: June 3, 2016

Residential Tenancy Branch