



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KENSON REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for an Order of Possession for Breach (of a material term of the tenancy) pursuant to section 55 and for authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant confirmed receipt of the landlord's Application for Dispute Resolution package and evidentiary materials.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession as a result of a Breach of a material term of the tenancy agreement, particularly the end of the fixed term tenancy?
Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began on May 1, 2015 as a fixed term one year tenancy with a rental amount of \$1600.00 payable on the first of each month. The landlord continues to retain an \$800.00 security deposit paid by the tenant at the outset of the tenancy (April 24, 2015). The landlord submitted a copy of the residential tenancy agreement and an addendum to the agreement as evidence for this hearing.

The landlord submitted that the one year fixed term tenancy has come to an end. However, the tenant has not vacated the rental unit. The tenant submits that the landlord made a promise that he could stay for a further two years. He referred to a note at the bottom of the addendum to the residential tenancy agreement that read,

*Tenant will change the carpet with new carpet at their own cost
As such the owner will retain the same rent after renewing the second contract
for further one year.*

The landlord testified, supplying documentary evidence (copy of the Notice to End Tenancy) that he provided the tenant with notice that the tenancy will end at the end of the fixed term including but not limited to the following methods of delivery;

- Copy of the residential tenancy agreement;
- Letter to the tenant prior to the end of the tenancy;
- Notice to End Tenancy provided to the tenant prior to the end of tenancy; and
- Email correspondence with the tenant.

The tenant insists that there are unresolved matters with the landlord: that he replaced carpets within the unit and that he is subject to a new tenancy agreement. The tenant did not submit a new tenancy agreement as evidence. He did submit copies of receipts for carpet within the rental unit and he relied on the note above referencing a second contract. The landlord submitted that, after writing the reference to the carpet and a second agreement, the landlord made it clear to the tenant that they did not intend to renew the lease. The landlord states that while they gave the tenant extra time to vacate the residence, the receipt for rent provided for the month of May 2016 indicated “for use and occupancy only” and the tenant was advised again that they would not renew the lease.

Analysis

There is evidence that proves that this tenancy began as a one year fixed term tenancy to end on April 30, 2016. Residential Tenancy Policy Guideline No. 30 provides direction on the definition and terms of a fixed term tenancy:

A fixed term tenancy is a tenancy where the landlord and tenant have agreed that the tenancy agreement will begin on a specified date and continue until a predetermined expiry date...

Section 44 of the *Act* addresses how a tenancy ends, including a fixed term tenancy:

44 (1) A tenancy ends only if one or more of the following applies:

...(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy...

Policy Guideline No. 30 also indicates that, a landlord and tenant may agree to renew a fixed term tenancy agreement with or without changes, for another fixed term. In accordance with the *Act* and the Policy Guidelines, the tenancy agreement signed by both parties in this matter states that

... Tenant may renew this lease for a further term ...Tenant's failure to obtain written agreement of renewal or extension of this Lease from the Landlord shall confirm end of tenancy at the expiry of the Lease.

(emphasis added)

While the tenant submitted that he has reached an agreement with the landlords to renew or extend the lease, he has not provided evidence to sufficiently support this claim. In this form of tenancy, a term is fixed for the assurance of both parties. With few exceptions, this tenancy will continue to the end of its term, allowing the tenant and landlord the security that comes with this fixed period of time. This form of tenancy also has a scheduled end (or expiration) date with the option to renew if both parties agree to set a new term for the tenancy.

Despite the handwritten note on the addendum to the original tenancy agreement, I find that the landlords have not agreed to renew this rental agreement. The email and written correspondence to the tenant by the landlord proves that they did not intend to renew the tenant's rental agreement when they reached the end date to make that decision. Pursuant to the legislation and the Policy Guideline provided above, if a tenant does not obtain written agreement to renew their lease from the landlord, the tenancy will end at the expiry date on the original agreement. When the tenants and landlord signed the rental agreement for a term of one year, both parties agreed to all the terms within that agreement as long as they comply with the *Act*. In this particular circumstance, the landlord allowed the tenant to reside in the rental unit for an additional month with the caveat that the tenant's rent for May 2016 was for "use and occupancy only" for the month of May 2016.

I find that the landlords provided their intention clearly to supplement the fixed term tenancy itself. I find that the written note on the addendum to the original tenancy agreement does not equate to an assurance that the lease would be renewed. I find that a written renewed lease was not created and signed in agreement by both parties. I find that the tenancy ended in accordance with the fixed term tenancy agreement, the

singular document existing to describe the terms of the agreement between these two parties.

As the tenant is obliged to vacate the rental unit, I find that the landlord is entitled to a 2 day Order of Possession.

As the landlord has been successful in this application, I find the landlord is entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). 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.

I allow the landlord to reduce the tenant's \$800.00 security deposit by \$100.00 to recover the filing fee for this application. The tenant's \$800.00 deposit is reduced to \$700.00.

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 03, 2016

Residential Tenancy Branch