



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenants' application: CNC, CNL

Landlord's application: MND, MNDC, OPC, OPL, O, FF

Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The tenants applied to cancel a one month Notice to End Tenancy for cause and a two month Notice to End Tenancy for landlord's use. The landlord applied for a monetary award and for an order of possession. The hearing was conducted by conference call. The landlord attended with her agent and the tenants called in and participated in the hearing. The parties exchanged a large quantity of documents before the hearing.

Issue(s) to be Decided

Should the Notice to End Tenancy for cause dated May 26, 2016 be cancelled?

Should the Notice to End Tenancy for landlord's use dated May 26, 2016 be cancelled?

Is the landlord entitled to an order of possession pursuant to either Notice?

Is the landlord entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is a house in Kelowna. The house has a separate self-contained suite in the basement. The tenancy began July 1, 2015 for one year term ending June 30, 2016. The monthly rent was \$2,700.00 and the tenants paid a security deposit of \$1,350.00 and a pet deposit of \$1,350.00 on May 12, 2015. The tenancy agreement was prepared on the Residential Tenancy Branch standard form, but the landlord included a separate addendum that contained 42 additional terms. One of the addendum terms prohibited the tenants from subletting the legal basement suite. There is an outdoor swimming pool on the rental property. The landlord said that initially the tenants did not plan to use the pool, but before the tenancy agreement was signed they

changed their minds. The tenancy agreement addendum contained a provision that the tenants would be responsible for pool care expenses, the pool work to be performed by the landlord's designated contractor. The agreement provided that the tenants would pay an additional \$50.00 per month from July through October, 2015: "in order to prepare the pool for use for through the summer and for the remainder of their tenancy."

The landlord prepared a new tenancy agreement for a fixed term commencing July 1, 2016 and ending June 30, 2017. The agreement was signed by the landlord on April 30, 2016 and by the tenants on May 12, 2016. The agreement provided that the monthly rent for the new term would be \$2,778.30, payable on the first of each month. The tenancy agreement referred to a four page addendum with 44 terms said to be attached to the tenancy agreement. The addendum was not attached to the agreement.

The landlord served the tenants with a one month Notice to End Tenancy for cause and a two month Notice to End Tenancy for landlord's use. Each of the Notices was dated May 26, 2016. The Notice to End Tenancy for cause alleged that the tenants had seriously jeopardized the health or safety or lawful right of another occupant or the landlord, that the tenant has not done required repairs of damage to the unit and that the tenant breached a material term of the tenancy agreement that was not rectified within a reasonable time after written notice to do so.

The stated reason for the two month Notice to End Tenancy given by the landlord was that the rental unit will be occupied by the landlord or the landlord's close family member. The landlord said she intends to move from Alberta to live in the rental unit. the landlord said that she does not consider that there is a valid fixed term tenancy agreement in place because the tenants have not signed the addendum to the tenancy agreement. The landlord's position is that because the tenants did not sign an addendum to the fixed term tenancy agreement the new fixed term agreement is invalid; therefore this is a month to month tenancy and she is able to give the tenants a Notice to End Tenancy for landlord's use.

The landlord said that she also gave the tenants a form of "Mutual Agreement to End a Tenancy" that she expected the tenants to sign. The landlord said that she intended to move into the basement suite and permit the tenants to rent the main floor of the rental unit under a new agreement.

With respect to the one month Notice to End Tenancy for cause, the landlord said that the tenants neglected to look after the yard and allowed the weeds to grow uncontrollably. She said the tenants did not cooperate with the landlord's efforts to have the weeds sprayed with weed killer.

The landlord said that the neighbour was disturbed by the tenants' dog. The landlord said the tenants agreed to put up a barricade, but the tenants failed to put up the barricade as promised. The landlord also said the tenants cancelled the scheduled pool maintenance work by the landlord's contractor. The landlord said these matters constituted cause for ending the tenancy. The landlord sent a May 28 letter to the tenants described as a "Final Warning". The landlord said that the tenants had not removed weeds said to be overtaking the yard. At the hearing, however, the landlord said the weeding had been done. The landlord also referred to an unsigned version of the addendum that contained a provision requiring the tenants to erect a barricade

In her application for dispute resolution the landlord claimed payment of the sum of \$1,175.00 said to be for weed removal and pesticide application and a further amount for a Shaw cable account.

The tenant testified that the landlord does not have grounds to end the tenancy pursuant to the one month Notice to End Tenancy for cause. The tenant said that the landlord may not end the tenancy pursuant to the Notice to End Tenancy for landlord's use and she has acted in bad faith in giving the Notices. Before the expiry of the original term of the tenancy the parties signed a second tenancy agreement for a one year term from July 1, 2016 to June 30, 2017. The tenant said that the landlord did not provide an addendum when the agreement was signed. She testified that the landlord has delivered several different versions of the addendum with terms that contradict the terms of the tenancy agreement and that contains terms that differ from the original addendum. The landlord also sent a different form of tenancy agreement to the tenants purporting to rent only the upper portion of the rental property, contrary to the signed agreement. The tenant testified that the landlord sent a total of five different addendum forms after the tenants signed the fixed term tenancy agreement on May 12, 2016.

The tenant said that the landlord's complaints about weeds are unfounded. The neighbours have no ongoing concerns with the tenants' dog and they do not want the tenants to erect a barricade. The landlord inserted a requirement into one of the revised addendum clauses to state that the tenants must erect a barricade. The tenants did not sign or agree to this provision. The tenants submitted letters from several neighbours who live near the rental property. The neighbours stated that the property is well maintained and they have no issues with the tenants' dog, which is described as obedient and well behaved.

The tenants testified that they approached the landlord about renting the basement suite. They received the landlord's permission to sublet the basement suite, but after

they had secured a tenant with the approval of the landlord she said that the rental could not proceed because the landlord's insurance would not cover the rental. Since then the tenants decided that they will occupy the whole of the rental unit themselves. The tenants are not willing to change the tenancy agreement or to consent to allow the landlord to occupy the basement suite. The tenants' intention is to remain in the rental unit for the duration of the fixed term. The tenants submitted that the landlord and her agent are harassing the tenants and interfering with their quiet enjoyment of the rental property in order to force them to move.

Analysis

The landlord has alleged that there are grounds to end the tenancy pursuant to the one month Notice to End Tenancy for cause. The landlord claimed that the tenants have not weeded the property and failed to erect a dog barricade. I find that the landlord has not established that there are grounds to end the tenancy. The landlord acknowledged that the weeding has been done. The tenants and the neighbours who submitted statements on behalf of the tenants attest that the rental property is well kept. The landlord has not provided evidence to establish that there is any current or continuing issue with respect to the tenants' dog. The landlord inserted a provision requiring a barricade into a form of addendum that she prepared. This document was not signed or accepted by the tenants and it does not form part of the tenancy agreement. I find that the landlord has not established that there are sufficient grounds to end the tenancy for cause and I grant the tenant's application and I order that the one month Notice to End Tenancy for cause dated May 26, 2016 be, and is hereby cancelled.

The landlord served the tenants with a two month Notice to End Tenancy for landlord's use. The Notice to End Tenancy required the tenants to move out of the rental unit by July 31, 2016.

Based on the documents provided and the testimony of the parties, I find that the landlord and tenants entered into a new fixed term tenancy agreement for a one year term commencing July 1, 2016 and ending June 30, 2017. The landlord did not provide an addendum at the time the agreement was signed. Since then she has given the tenants a variety of different forms of addendum, the latest of which contradicts the essential terms of the tenancy agreement. The tenants have refused to sign any of these conflicting documents. The landlord has argued that the tenants' failure to sign the latest of these forms renders the tenancy agreement null and void. I do not accept that argument. I find that the tenancy agreement signed May 12, 2016 is a valid and binding agreement containing all the essential terms of the tenancy. The landlord is not free to re-write the addendum or to unilaterally insert new terms after the agreement has

been signed. To the extent necessary the new tenancy agreement should be considered to incorporate the terms of the addendum that was attached to the first agreement for the term ending June 30, 2016.

I have found that there is a valid fixed term tenancy agreement for a term ending June 30, 2017. Section 49 (2) (c) of the *Residential Tenancy Act* provides that a Notice to End Tenancy for landlord's use may not end a fixed term tenancy on a date earlier than the date specified in the tenancy agreement as the end of the tenancy. The two month Notice to End Tenancy is invalid for that reason and I therefore order that the notice be and is hereby cancelled. The tenancy will continue until ended in accordance with the *Residential Tenancy Act*.

The landlord requested a monetary order in the amount of \$1,175.00. The landlord did not provide invoices to support claims for weed removal, pesticide replacement or for the cost of a router; these claims are dismissed without leave to reapply.

Conclusion

The tenants' application has been granted and the Notices to End Tenancy have been cancelled. The landlord's application has been dismissed without leave to reapply.

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: July 18, 2016

Residential Tenancy Branch