



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brookmere Gardens Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes O

Introduction

Both parties appeared. No issues regarding the exchange of evidence were identified.

On her application the tenant asked for an order extending the end of her tenancy to January 31, 2017. In legal terms, the tenant was asking for an order declaring the notice to end tenancy that she had given to the landlord to be invalid.

After a forty minute discussion in which the applicable law, various options for the parties, and all possible outcomes were explained, the tenant decided that she wanted to proceed with a hearing.

Issue(s) to be Decided

Is the notice to end tenancy given by the tenant to the landlord on November 18, 2016 valid and binding on the tenant?

Background and Evidence

This tenancy commenced July 1, 2016 as a three month fixed term tenancy and has continued thereafter as a month-to-month tenancy. The monthly rent of \$850.00 is due on the first day of the month. The tenant paid a security deposit of \$425.00 and a pet damage deposit of \$125.00.

In March of 2016 the tenant became acquainted with T. The tenant testified that after she moved into the unit T started giving her lots of trouble. The first time she reported as assault on her by T to the police was August 4. A no-contact order was made against T; he was to stay from the tenant's home, her daughter's school, and her mother's home.

T constantly breaches the no-contact order. The rental unit is on the ground floor so T could rattle her windows, bang on the windows and patio door, and stand outside yelling at her. Sometime the tenant would call the police. This resulted in a large number of

police attendances at the unit. Sometime, because she was afraid of complaints by the neighbours, she would let T in. Often when she let him in there would be incidents that disturbed the neighbours.

At some point T was charged, arrested and released on bail. He behaviour did not change and eventually he was arrested at the end of November or beginning of December and has been held in custody ever since, pending the outcome of trials set for the future.

With the assistance of Victim Services the tenant has applied for priority housing with BC Housing. She is hoping that a place will be offered to her soon.

Meanwhile the landlord was receiving many complaints from the neighbours. On August 8 the tenant was given a second warning letter about the disturbances at the rental unit. On October 28 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause.

On November 16 the landlord and tenant communicated. The landlord advised the tenant that since she had not disputed the notice within the time limit she was deemed to have accepted that the tenancy would end on November 20. The tenant responded that she still had one more day to file an application for dispute resolution. They agreed to meet the next day.

The landlord and tenant met at 11:00 am in the office. The tenant wanted more time in which to find a new place. The landlord offered to give the tenant a good reference letter because the rent was always paid on time and indicated that she would agree to the tenancy ending December 31. The landlord produced a blank notice to end tenancy for the tenant to review.

The tenant asked for time to think about things and left the office. The tenant testified that making the decision was very stressful. She didn't think she had time to go to the Residential Tenancy Branch office to file an application disputing the notice to end tenancy; she could not get hold of her mother; and she was afraid she would have to move at the end of the month and she did not have a place to move to. The tenant testified that she did could not remember how long she spent thinking about her decision but it was at least a couple of hours. Eventually she told the landlord she was going to sign the notice to end tenancy by tenant. The document was dated November 17 and gives notice effective December 31, 2016.

When asked why she had not filed an application disputing the notice to end tenancy before the date of the meeting the tenant said that T was still at large so she rarely went out of the apartment. She did not have Internet access at the time so could not apply on-line.

Once the tenant gave her notice to end tenancy the landlord did not take any steps to enforce the 1 Month Notice to End Tenancy for Cause.

On December 20 the tenant contacted the landlord and advised that T had been arrested and was being held in custody. She said that she had not found another place to live; she had not heard from BC Housing; and she would like more time. The landlord responded that there were "no more chances".

The landlord testified that since T has been arrested there have continued to be a steady flow of complaints about events at the tenant's unit and some of the other tenants are threatening to move out. The tenant testified that T is behind the incidents that have occurred since his arrest but that things have calmed down considerably.

The tenant is thirty-three years old. She has a high school diploma and a care worker certificate. She did not disclose any health issues.

The tenant testified that the situation has been caused by T and it is not fair that she should have to give up her home because of his behaviour.

Analysis

In order to be legally binding a legal document such as a contract or notice to end tenancy must be signed by a person who:

- Had the intellectual capacity to understand the documents and the consequences of signing it. Their capacity must not have been impaired by illness, disability, alcohol or drugs.
- Has not been tricked into signing the document.
- Has not been forced to sign the document by unlawful pressure, force or threats.

The evidence is clear that the tenant understood the nature of the document and the consequences of signing it. She also understood that she could dispute the 1 Month Notice to End Tenancy for Cause and the procedure for doing so. She also understood that if she did not dispute the notice the landlord could take action to enforce it, although she did not understand how long it normally takes a landlord to apply for and obtain an order of possession.

The tenant chose the course of action that she thought would give her the most time. She did not raise any objection about the document she had signed until just days before her tenancy was to end and she found herself with no place to move to.

I find that the notice to end tenancy signed by the tenant is a legally binding document. The tenant understood the document and the consequences of signing it; she was not tricked into signing it' and the landlord did not force her to sign the document.

Conclusion

The tenant's application for an order setting aside the notice to end tenancy she gave the landlord on November 18, 2017 is dismissed.

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: January 26, 2017

Residential Tenancy Branch