



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, O

Introduction

The landlord applies for an order of possession effective for the end of February 2017 claiming that the fixed term tenancy agreement requires the tenants to vacate the rental unit at that time.

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the tenancy agreement require the tenants to move at the end of the fixed term?

Background and Evidence

The rental unit is a two bedroom basement suite in a house. The upper portion of the home is rented to others by the same landlord.

The tenancy started March 1, 2015 under a one year fixed term agreement at a rent of \$900.00 due on the first of each month.

The landlord holds a \$450.00 security deposit.

The original tenancy agreement provides that at the end of the fixed term on February 29, 2016, the tenancy would continue on a month to month basis or for another fixed length of time.

The landlord testifies that in December 2015, in anticipation of the original fixed term coming to an end, the parties signed another tenancy agreement. He produces a copy. It appears to be signed by the landlord and both tenants on December 17, 2015. It provides that the tenancy will be a fixed term tenancy from March 1, 2016 to February 29 [sic], 2017.

The agreement is in the standard form made available to the public by the Residential Tenancy Branch. Its iteration is #RTB-4/08.

Under section number 2 in the standard agreement, "Length of Tenancy," there are three options for the parties to choose from, the choice being: a month to month tenancy, a fixed term tenancy or a different periodic tenancy. The parties completing the document are asked to "please check a, b or c." In the standard form agreement a box is provided by each choice, in which the parties are to denote which one of the three length of tenancy choices they have agreed to.

In this tenancy agreement the choice boxes have not been reproduced. There is no place for the parties to check which length of tenancy they have agreed on. The landlord says the boxes were omitted due to a printer error.

However, the parties have filled in other boxes, apparently not removed by the printer error, provided in the standard agreement to show that the tenancy is for a fixed length of one year, ending on February 29, 2017.

Below that area in the standard agreement, the parties have the option to choose whether at the end of the fixed term the tenancy continues on a month to month basis or another fixed length of time, or whether the tenancy ends and the tenants must move out. As with the length of tenancy choices, the two boxes provided for in the standard agreement are missing in this tenancy agreement. Though the standard agreement and this agreement both direct the parties to "please check one option" to show what is to happen at the end of the fixed term, neither option has been "checked."

In both agreements, under the option to indicate that the tenancy will end and the tenants must move out at the end of the tenancy, the parties are directed "If you choose this option, both the landlord and tenant must initial in the boxes to the right."

There is a box for each of the landlord and tenant to initial in. The copy of the tenancy agreement submitted by the landlord shows that he has initialed the landlord's box and that the tenant Ms. K.S. has initialed the tenant's box.

The landlord says he saw Ms. K.S. initial the box.

Ms. K.S. says that it is not her initial and that the landlord has forged it. She denies signing any such tenancy agreement, though later in her testimony she appeared to admit that she had signed the signature portion on the last page of the tenancy agreement.

Analysis

In considering the evidence submitted by the parties, it is to be kept in mind that the ending of a tenancy is a serious matter. Clear and cogent evidence will be required to support an eviction.

Section 6(3) of the *Residential Tenancy Act* (the “*Act*”) provides that a term in a tenancy agreement is not enforceable unless it is expressed in a manner that clearly conveys the rights and obligations under it.

Additionally, the *Act* confers a benefit and protection to tenants and authorities state that ambiguities in the interpretation of the *Act* should be resolved in favour of tenants (*Samji v. HFBC Foundation* 2012 BCSC 1367, Masuhara J.).

In this case, whether the landlord suffered a printing error or not in creating the tenancy agreement he used to document his landlord and tenant relationship with the respondents, the agreement he used indicates that if the tenancy ends and the tenants are required to move out, the parties should check that option. Whether the boxes were missing from the standard document or not, the parties did not check that option.

The fact that the landlord and possibly one of the two tenants placed their initials in the boxes behind one of the choices, is not, in my view indicative of a choice having been made by them. They were required to make their choice by checking one of the two options and that has not been done.

In all the circumstances of this case I find that the tenancy agreement prepared by the landlord is ambiguous as to whether or not at the end of the fixed term the tenancy continues on a month to month basis or whether it ends and the tenants must move out.

As stated above, to be enforceable a term must be expressed in a manner that clearly communicates the rights and obligations under it. This term in the tenancy agreement does not.

As well, also as stated above, any such ambiguity must be resolved in favour of the tenants.

I find that this tenancy does not end at the end of February 2017 and that the landlord is not entitled to an order of possession for then based on this term in the tenancy agreement.

Conclusion

The landlord's application 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 04, 2017

Residential Tenancy Branch