



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT COMMISSION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB

Introduction

The landlord applies for an order of possession pursuant to the terms of a fixed term tenancy agreement.

The tenant and her support worker attended for the hearing on April 26 and requested and adjournment to permit her legal counsel to attend. The matter was adjourned to April 27. On that day only the tenant's legal counsel Mr. B. attended on her behalf.

Both of the landlord's representatives attended each day. The attending parties 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

Has this tenancy ended, entitling the landlord to an order of possession.

Background and Evidence

The rental unit is a bachelor apartment in a 120 unit apartment building. The tenancy started August 22, 2016 pursuant to a five month fixed term tenancy agreement. The monthly rent is \$590.00. The landlord holds no deposit money.

The tenant's support worker alleges the tenant is disabled in a number of aspects. Mr. Z. for the landlord denies knowledge of the tenant having any disabilities.

Mr. Z. testifies that the landlord had been having a number of problems with the tenant during the fixed term and so, as its expiry was drawing near he offered the tenant an additional one month fixed term tenancy in order to permit her to find another place.

The tenant accepted and a second fixed term tenancy, dated January 27, 2017, was drafted and signed by the parties. That tenancy agreement provides that the tenancy will end February 28, 2017 and that the tenant must move out of the rental unit.

The tenant has not moved out.

Analysis

It has not been proved that the tenant is operating under any disability.

Mr. B. for the tenant argues that the initial fixed term tenancy agreement did not required the tenant to move out of the rental unit at the end of the fixed term. Rather, the parties agreed to the term that:

the landlord and tenant may agree to enter into a new tenancy agreement. If the landlord and tenant do not enter into a new tenancy agreement, the tenancy continues on a month-to-month basis on the same terms, unless the tenant gives legal written notice to end the tenancy.

Neither side provided a copy of the original tenancy agreement but the landlord agrees that was the term agreed to in it; the tenant was not required to move out at its end.

I do not accept Mr. B.'s view that the second, one month fixed term tenancy was coerced or was unconscionable or that the landlord acted in an underhanded fashion. Rather, it is apparent that the landlord was operating under a mistake which it represented to the tenant and upon which both parties relied.

The term in the first fixed term tenancy agreement provides that at its end, if the parties do not agree to another tenancy agreement the old one continues on a month to month basis. It is apparent from the landlord's letter of January 20, 2017 to the tenant that it understood that if no agreement was reached about a new tenancy agreement, it was not obliged to continue on with a regular tenancy after the end of the fixed term tenancy.

That understanding is clearly wrong. As Residential Tenancy Policy Guideline 30, "Fixed Term Tenancies" notes:

If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month-to-month tenancy on the same terms.

Because the second, one month, fixed term tenancy was negotiated under a mistake, it can be voided by either party, as the tenant is clearly doing here.

Conclusion

The landlord's application must be dismissed. This tenant is a month to month tenancy under the same terms and conditions as the initial fixed term agreement.

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: April 30, 2017

Residential Tenancy Branch