



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, OPB

Introduction

The Application for Dispute Resolution filed by the landlord seeks an Order of Possession alleging the tenancy agreement is a fixed term tenancy and the tenant has agreed he will vacate on the specified date.

A hearing was conducted by conference call in the presence of a representative of the applicant and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served by mailing, by registered mail to where the Tenant resides.

Issue(s) to be Decided

The issue to be decided is whether the landlord is entitled to an Order of Possession?

Background and Evidence

On April 16, 2015 the parties entered into a one year fixed term tenancy agreement that provided that the tenancy would start of May 1, 2015 and end on April 30, 2016. The rent was \$1200 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$575 at the start of the tenancy. The following terms was initialed by both parties and was included on the first page of the tenancy agreement:

“At the end of the fixed term, ending on April 30, 2016, the tenant agrees and the landlord accepts that the said tenant(s) of this lease agreement will vacate, give up possession of, and move out of the residence at Suite #...., British Columbia, Canada.”

On May 20, 2016 the parties signed a document called “RENEWAL OF RESIDENTIAL TENANCY LEASE AGREEMENT that included the following:

- “Please be advised that your Tenancy Agreement expires on April 30, 2016, and we are pleased to offer a renewal subject to the following changes, for a term of one year, from June 1, 2016 to May 31, 2016, at a monthly rent of \$1195 payable in advance on the first day of each month during the term.”
- “By mutual agreement of the parties, the Tenancy Agreement is hereby renew for the additional period herein, described at the monthly rental noted above, and upon the same covenants, agreements, rules and regulations contained in the expiring Tenancy Agreement”
- “We could ask that you give consideration to the offer and if agreeable sign and return one copy of this letter on or before May 20, 2016.”

The landlord testified they experienced a number of complaints about the tenant smoking in the rental unit which is a no smoking building. As a result they decided not to renew the tenancy agreement. The tenant was served with a written notice on April 24, 2017 reminding him that the fixed-term lease agreement will be terminating on May 31, 2017.

The landlord further testified they have rented the rental unit to another Tenant who was to take possession on June 1, 2017.

The Law:

Section 5 and 6 of the Residential Tenancy Act provides as follows:

This Act cannot be avoided

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Enforcing rights and obligations of landlords and tenants

6 (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.

(2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) *[determining disputes]*.

(3) A term of a tenancy agreement is not enforceable if

- (a) the term is inconsistent with this Act or the regulations,
- (b) the term is unconscionable, or
- (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Section 13(2)(f)(iii) provides as follows:

Requirements for tenancy agreements

13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

(f) the agreed terms in respect of the following:

- (i) the date on which the tenancy starts;
- (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;
- (iii) if the tenancy is a fixed term tenancy,
 - (A) the date the tenancy ends, and
 - (B) whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date;

Section 12, Schedule to the Residential Tenancy Act Regulations provides as follows:

Ending the tenancy

12 (3) If this is a fixed term tenancy and the agreement does not require the tenant to vacate at the end of the tenancy, the agreement is renewed as a monthly tenancy on the same terms until the tenant gives notice to end a tenancy as required under the *Residential Tenancy Act*.

Policy Guideline 30: Fixed Term Tenancy Agreement includes the following:

B. REQUIREMENTS FOR FIXED TERM TENANCY AGREEMENTS

Section 13 of the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* (the Legislation) sets out the requirements for tenancy agreements. Fixed term tenancy agreements must state the date the tenancy ends, and whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date. If the parties do not agree that the tenant must vacate the rental unit at the end of the fixed term, **and if the parties do not enter into a new tenancy agreement, the tenancy continues as a month-to-month tenancy. (my emphasis)**

E. WHEN A FIXED TERM TENANCY BECOMES A MONTH-TO-MONTH TENANCY

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. (my emphasis)**

Analysis:

After carefully considering all of the evidence I determined the landlord has failed to establish a right to an Order of Possession for the following reasons:

- While the original tenancy agreement contained a number of clauses that are inconsistent with the Residential Tenancy Act I determined that the end of tenancy provisions were clear and required that the tenancy would end on April 30, 2016 and that the Tenant must vacate at that time. However, the parties failed to renew that fixed term tenancy agreement prior to the end of the fixed

term. The Renewal of Residential Tenancy Lease Agreement was signed on May 20, 2016. The Policy Guidelines provide that if the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement on a month-to-month basis on the same terms.

- I do not accept the submission of the landlord that the landlord is entitled to an Order of Possession based on the Renewal of Residential Tenancy Lease Agreement. The landlord has not given any consideration to support the validity of that document as the tenancy was previously renewed by operation of law on a month-to-month basis.
- Further, I do not accept the submission of the landlord that Renewal of Residential Tenancy Lease Agreement gives the landlord the right to end the tenancy on the basis of the fixed term has come to an end and the tenant must vacate. Section 6 of the Act provides that the term is not expressed in a manner that clearly communicates the rights and obligations under it. The concept of *contra proferentum* provides is explained by the Honourable Justice Romilly in *Horne Coupar v. Velletta & Company*, 2010 BCSC 483 as follows:

“*Contra proferentum* is a rule of contractual interpretation which provides that an ambiguous term will be construed against the party responsible for its inclusion in the contract. The interpretation will therefore favour the party who did not draft the term presumably because that party is not responsible for the ambiguity therein and should not be made to suffer to it. This rule endeavours to encourage the drafter to be as clear as possible when crafting an agreement upon which the parties will rely. The rule also encourages a party drafting a contract to turn their mind to foreseeable contingencies as failure to do so will result in terms being constructed against them. That there is ambiguity in the contract is a requisite of the application of this rule, however, once ambiguity is established, the rule is fairly straightforward in application...

- The original tenancy agreement clearly communicated that the fixed term ends on April 30, 2016 and the tenant must “give up possession of, and mover out of the residence.” This is set out on the first page of the tenancy agreement and the tenant initialed it. The Renewal does not include this provision. It does not provide that the tenant must vacate the rental unit. The landlord relies on the provision that purports to renew the expiring Tenancy

Agreement. However, the end of tenancy date in the original agreement clearly does not apply as it refers to April 30, 2016.

- This ambiguity and inconsistency could easily have been rectified had the landlord ensured the provision that the Tenant must vacate the rental unit at the end of the fixed term was included in the Renewal.

As a result I order that the application of the landlord be dismissed without liberty to re-apply. The tenancy shall continue on a month to month basis with the rights and obligations of the parties remaining unchanged.

At the hearing the landlords alleged they have “cause” to end the tenancy based on the tenant’s smoking. The landlord must serve a one month Notice alleging this ground and the tenant would have an opportunity to dispute for that issue to be adjudicated.

This decision is final and binding on both parties.

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 15, 2017

Residential Tenancy Branch