Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, O, FF

Introduction

A hearing was convened to deal with the tenant's application filed May 12, 2017 under the *Residential Tenancy Act* (the "Act") for an order that the landlord comply with the Act, regulation, or tenancy agreement, for "other" unspecified relief, and for return of the application filing fee.

The applicant tenant and his co-tenant attending the hearing. The building manager attended on behalf of the corporate landlord. Both parties were given a full opportunity to be heard, to present affirmed testimony and documentary evidence, to make submissions and to respond to the submission of the other party.

Service of the tenant's application and notice of hearing was not at issue.

Issue(s) to be Decided

Is the tenant entitled to an order that the landlord comply with the Act, regulation, or tenancy agreement?

Is the landlord's use of short-term tenancy agreements in this case unconscionable?

Is the tenant entitled to recover the application filing fee?

Background and Evidence

Tenant's submissions

The tenant testified he has been a tenant under various tenancy agreements with the landlord for over three years, and that the agreements have always been renewed. At one point, he had a one year lease but signed a mutual agreement to end that tenancy after his roommate left. At that point he was offered only a six month term lease. When he asked why the lease was only for a term of six months, he was advised that he had

to finish the remainder of the prior one year lease that had ended by way of mutual agreement.

The tenant submitted that the landlord's conduct is unconscionable and that the landlord is avoiding the Act. He stated that there are other Residential Tenancy Branch decisions to the same effect.
The tenant feels that by offering him a series of back-to-back short term leases, the landlord is creating certain advantages for itself. As an example, he stated that he has been asking the landlord by text for repairs and these requests have been ignored. The tenant did not provide evidence of his requests for repairs.

The tenant further submitted that the landlord is effectively creating a long-term tenancy by signing multiple short-term tenancy agreements. He stated that the landlord has accepted a series of post-dated cheques from him for months after the end of his current-fixed term agreement. The details section of the tenant's application is as follows:

> The first lease . . . was month-to-month. The second lease was for 1 year, with the spoken intention to go to month-to-month. Then there were two more leases, 6 months each, both with verbal assurance of month-to-month. We wrote out a year's worth of cheques with the lasts lease as we were both told it would switch to month-to-month, and all cheques were accepted. Regardless of the termination date listed in the copy of the lease, there was never an indication of non-renewal.

The tenant testified that he keeps the rental unit in immaculate condition and always pays rent on time. He recounted that he was told verbally by management that everything was going well with this lease and that he would be offered a month-to-month tenancy.

The tenant's last lease expired on May 31, 2017. It is between the landlord and the tenant and his girlfriend, ALB. In April 2017, the landlord sent the tenants a "non-renewal of lease" letter, notifying them that their "semi-annual lease" would not be renewed. That letter is dated April 3, 2017. I asked the tenant to provide me with the landlord letter notifying him that his lease would not be renewed, which letter was generated by the landlord and could have been in the evidence submitted by either party. The landlord consented to my receiving that letter at this stage.

The tenants are still occupying the rental unit and wish to continue to do so. The tenant seeks an order requiring allowing the tenancy to continue on a month-to-month lease.

The tenant testified that the landlord sent him a text two days before the hearing requiring rent for the month of June. The tenant advised that the landlord has post-dated cheques from him covering up to and including December 2017 but has not deposited the cheque for June 2017.

The tenant further submits that by accepting post-dated cheques for a period of time that extends beyond the end of the term lease, the landlord is effectively entering into a month-to-month tenancy.

Landlord's response

The building manager in response testified that the tenant was not promised that he could have a month-to-month tenancy. The manager further stated that month-to-month tenancies are not available in that particular building.

The building manager further testified that the tenant was changing roommates "practically every year" so that management did not have confidence in him and his roommate situation, which is why they offered the tenant only short term leases.

The building manager further stated that he had no knowledge or notice of any repair requests from the tenant, and denied holding post-dated cheques for June or for any other future month.

The building manager further stated that this tenant's leases were not "automatically renewed" and that this tenant is not the ideal tenant he maintains he is. The manager stated that the tenancy agreements prohibit smoking and pets but this tenant smokes and has pets. The tenancy agreement does prohibit both smoking and pets. The landlord also stated that he had only spoken to the tenant verbally about smoking and pets, and that it was "easier to just do" short-term agreements. It was not clear from the manager's testimony when the concern with smoking and pets arose.

The tenant testified that, contrary to the landlord's submissions, his neighbour and other long-term tenants in the building are on month-to-month agreements. He pointed out that his first lease was for a fixed-term of one year and converted to month-to-month after the expiry of one year. The agreement in evidence confirms this.

The landlord included in its evidence copies of tenancy agreements with the tenant as follows:

1. Lease with term of November 1, 2014 – October 31, 2015 with tenant and MM (converting to month to month after expiry of one year).
2. Lease with term of December 1, 2015 – November 30, 2016 with tenant and MD (also appearing to convert to month to month after expiry of one year but because tenants have not initialed vacate clause while landlord has).
3. Mutual agreement to end tenancy with tenant and MD, effective May 31, 2016.
4. Lease with term of June 1, 2016 – November 30, 2016, with tenant and ALB (vacate clause initialed by both tenants).
5. Lease with term of December 1, 2016 – May 31, 2017, with tenant and ALB (vacate clause initialed by both tenants).

Analysis

Section 44 of the Act sets out the different ways in which a tenancy may end. Section 44(1)(b) provides that a tenancy may end if "the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy agreement." This is the section of the Act upon which the landlord relies in order to end the tenancy.

Here, the tenants have signed a tenancy agreement requiring them to vacate the rental unit after the expiration of the term. They have both initialed to indicate their understanding of this provision. Leases with fixed terms are allowed by s. 44(1)(b) of the Act, which provides that a tenancy may end at the expiration of the term. On the surface, there is nothing out of the ordinary about the case before me.

However, this is the tenant's fourth lease with the landlord and the third of three agreements that were apparently meant to be fixed term agreements (the vacate clause in the lease beginning December 1, 2015 was signed by the landlord but not the tenants). Section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if it is unconscionable. Section 3 of the Regulation states that a term is "unconscionable" if it is oppressive or grossly unfair to one party. Policy Guideline #8 states that one test for determining unconscionability is "whether the term is so one-sided as to oppress or unfairly surprise the other party. Such a term may be a clause limiting damages or granting a procedural advantage."

The tenant argues that that the landlord is avoiding the provisions in the Act requiring the landlord to maintain and repair the premises by refusing to renew a short-term lease agreement rather than comply with a tenant's requests for repairs. However, the tenant has not submitted any evidence of his requests for repairs.

The building manager himself admits that the use of fixed term tenancies allows the landlord to avoid the trouble of ending tenancies under other sections of the Act. Indeed, the landlord's manager testified that the building simply does not enter into month-to-month tenancy agreements for this reason. Clearly the landlord's intention is to avoid the Act.

I find that the tenant was not told the truth about the landlord's rationale for offering him a six month term tenancy after agreeing to end the tenancy beginning December 1, 2015 (which may have converted to a month-to-month tenancy after the expiration of one year in light of the tenants' failure to initial the vacate clause, although the tenant appears not to have noticed this). The tenant testified that he was told that the remaining term of the prior lease had to be covered off or used up. The manager did not disagree with the tenant's evidence. There would in fact have been no reason to limit the newest lease to six months for the landlord's stated reason. I also note that very first lease between the tenant and his then-roommate and the landlord could simply have been amended to remove the departing roommate and add another, and it would then have converted to a month-to-month agreement, and it would not then have been necessary for the tenant to sign any of the following fixed term agreements.

The landlord's manager testified that the management did not have confidence in the tenant's choice of roommates. Had the tenant known that the landlord was offering a shorter term lease the third time the tenancy was negotiated because of its concerns about the stability of his tenancy, he might have been able to address the landlord's concerns and negotiate a longer term or a month-to month tenancy. I conclude that the landlord left the tenant unaware of its motivations and concerns, and then took advantage of the tenant's ignorance around its concerns by offering him only a six month lease, while at the same time suggesting orally that the term lease would be renewed or continued as a month-to-month.

Along similar lines, the landlord has now failed to convey its concerns about the tenants' alleged smoking and keeping of pets clearly and in writing. The landlord has thus not provided the tenants with as clear an opportunity to address those alleged concerns as would have been required has this been a month-to-month tenancy. I find that the landlord has taken procedural advantage of the tenants by entering into a fixed term lease in order to avoid having to apply under the processes for ending tenancies otherwise required by the Act.

The tenant testified that he was advised that he would be offered a month-to-month tenancy and that he was not aware of any concerns about his tenancy that would preclude this. I accept the tenant's evidence in this regard, as the landlord's failure to

share its reasons for offering only short-term agreements with the tenant, and its failure to clearly communicate concerns around pets or smoking, are consistent with a lack of clear communication by the landlord.

I also note that the landlord's failure to share information with the tenant, as well as the current state of the rental market, leave the tenant in a particularly vulnerable situation.

Most tellingly, the agreements were always renegotiated or renewed. After the renegotiation or renewal of this number of tenancy agreements it was reasonable for the tenant to expect that his tenancy would continue. I accept the tenant's testimony that the expectation in these circumstances was that this would be a long term tenancy. The tenant began occupying the space in November of 2014 and has been residing there since then, albeit with different roommates or co-tenants. I also accept the tenant's evidence that he paid rent in advance with a series of cheques post-dated past the end of the expiry of the term of any particular agreement. This is consistent with his expectation that this would be a continuing tenancy. I also note that as of the date of the hearing the landlord had not yet attempted to apply for an order of possession based on the expiry of the fixed-term, but did ask the tenant to pay rent.

As noted in *Newman v. Hotel Bourbon* 2016 BCSC 1399, a "series of short-term leases are unconscionable when the expectation of the parties is that the tenant will be in a long-term occupation." This is because short-term leases are seen as a way to circumvent certain requirements of the Act, including the requirement that there be sufficient reason to terminate a tenancy for cause.

Here, I find that the vacate clause in the most recent tenancy agreement is unconscionable. I find the landlord's use of a series of short-term leases when the expectation is that the tenancy will be indefinite and as a means of avoiding the provisions in the Act governing ending tenancies for cause is not appropriate. Accordingly, I find the vacate clause not enforceable as per s. 6(3) of the Act, and I order that this tenancy continue as a month-to-month tenancy until ended in accordance with the Act.

Conclusion

The tenant's application is allowed. The term of the tenancy agreement requiring the tenants to vacate is unconscionable in the circumstances.

The tenancy continues on a month-to-month basis until it is ended in accordance with the Act.

As the tenant's application was successful, the tenant is entitled to recover the application filing fee. I authorize the tenant to withhold $100.00 from his monthly rental payment on a one time basis in satisfaction of this amount.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act and is final and binding unless otherwise specified in the Act.

Dated: June 28, 2017

Residential Tenancy Branch