



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, O

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution an order of possession for breach of an agreement and access to a portion of the residential property.

The hearing was conducted via teleconference and was attended by the landlord and the female tenant.

I note that while the landlord's original Application for Dispute Resolution sought an order of possession for breach of an agreement and for access to a portion of the residential property, the landlord submitted an Amendment to an Application for Dispute Resolution seeking to remove the above noted claim and seek an order of possession based on a 2 Month Notice to End Tenancy for Landlord's Use of Property and a monetary order for unpaid rent. I accept these amendments.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for landlord's use of property; to a monetary order for unpaid rent; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted that she purchased the residential property from the tenant and took possession on September 14, 2017. Both parties provided a copy of a tenancy agreement signed by both parties on August 8, 2016 for a 7 ½ month fixed term tenancy beginning on September 14, 2016 for a monthly rent of \$1,900.00 due on the 1st of each month with a security deposit of \$900.00 paid.

The tenancy agreement stipulated that the fixed term would end on April 30, 2017 and that this time the tenancy would end and the tenants would be required to vacate the rental unit. This clause is initialed by both the landlord and the tenant.

In her written and oral submissions the landlord submitted that the fixed term tenancy was scheduled to end on May 15, 2017 but that she entered in an agreement with the tenants to extend the fixed term for 6 weeks until the end of June 2017. The landlord acknowledged that the extension agreement was not put to writing and signed by the parties but rather it was agreed upon by text messages.

In support of this the landlord submitted a copy of one text message from her to the tenants that read the best she could offer as an extension was until the end of June 2017. The tenant submitted that there were additional text messages after that one submitted by the landlord showing further discussions about the extension and other issues.

The landlord submitted that despite moving the end of the fixed term tenancy to the end of June 2017 she was “informed” that she still had to issue a two month notice to end the tenancy to the tenant if she wanted her to vacate the rental unit by June 30, 2017. The landlord issued a 2 Month Notice to End Tenancy for Landlord’s Use of Property on April 30, 2017 with an effective vacancy date of June 30, 2017. However, instead of checking off any of the allowable reasons to issue a 2 Month Notice the landlord wrote, in the section indicating the rental unit would be occupied by the landlord: “Fixed term lease ending – owner will occupy house.”

In addition, the landlord crossed out, by way of a single pen stroke through the section of the Notice entitled “Tenant Compensation for Landlord’s Use of Property” and further wrote: “Fixed term lease Sept. 14/16 to May 15/17 with 6 week extension – (by text).”

The landlord seeks an order of possession based on this 2 Month Notice and has submitted the tenants have not paid any rent for the month of June 2017 and she seeks a monetary order in the amount of \$1,900.00 for June rent.

Analysis

Section 44(1) of the *Act* states a tenancy ends only if one or more of the following applies:

- a) The tenant or landlord gives a notice to end the tenancy in accordance with one of the following:
 - i. Section 45 (tenant’s notice);
 - ii. Section 46 (landlord’s notice: non-payment of rent);
 - iii. Section 47 (landlord’s notice: cause);
 - iv. Section 48 (landlord’s notice: end of employment);
 - v. Section 49 (landlord’s notice: landlord’s use of property);
 - vi. Section 49.1 (landlord’s notice: tenant ceases to qualify);
 - vii. Section 50 (tenant may end tenancy early);
- b) 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;
- c) The landlord and tenant agree in writing to end the tenancy;

- d) The tenant vacates or abandons the rental unit;
- e) The tenancy agreement is frustrated; or
- f) The director orders the tenancy is ended.

In the case before me, I accept that the parties entered into a fixed term tenancy in August 2016 that stipulated that the tenants must vacated the residential property no later than April 30, 2017. Despite the landlord's submissions I find the tenancy agreement clearly outlined the end of the fixed term to be April 30, 2017 and not May 15, 2017.

I accept, from the testimony of both parties, they agreed to an extension. However, I am not satisfied that the text message provided forms a written agreement by the parties. In fact, I find the wording of the text is simply the offer put forward by the landlord but it does not provide any indication of agreement by the tenants.

Even if I were to accept that this text message constitutes such an agreement, I find there is no wording in the text that stipulates that the tenants are required to vacate the rental unit at the end of June 2017. As such, I find the landlord has failed to provide evidence of an agreement that required the tenancy to end and the rental unit be vacated by June 30, 2017.

Furthermore, even if the subsequent agreement required the tenant to move out of the rental unit by June 30, 2017 the landlord still issued the tenant a 2 Month Notice to End Tenancy.

Section 49 of the *Act* allows a landlord to end a tenancy if:

- a. The landlord or a close family member of the landlord intends in good faith to occupy the rental unit;
- b. The landlord enters into an agreement in good faith to sell the rental unit; all the conditions on which the sale depends have been satisfied; and the purchaser asks the landlord, in writing, to give notice to end the tenancy if the purchaser or a close family member of the purchaser intends in good faith to occupy the rental unit;
- c. The landlord has all the necessary permits and approvals required by law, and intends in good faith, to:
 - i. Demolish the rental unit;
 - ii. Renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
 - iii. Convert the residential property to strata lots under the Strata Property Act;
 - iv. Convert the residential property into a not for profit housing cooperative under the Cooperative Association Act;
 - v. Convert the rental unit for use by a caretaker, manager or superintendent of the residential property; or
 - vi. Convert the rental unit to a non-residential use.

I note there is no provision under Section 44 or Section 49 of the *Act* that requires the landlord to issue any notice to a tenant to move out at the end of a fixed term and as such, if the landlord truly believed the tenancy was to end at the end of the fixed term there would be no need to issue a 2 Month Notice to the tenant.

I also note that on the 2 Month Notice itself there is a section entitled "Fixed-Term Tenancy Agreements". In this section line three states: "A notice to end tenancy is not required for fixed-term tenancies where a tenant must move out at the end of the term". So if the landlord believed she had a tenancy agreement that required the tenants to vacate on June 30, 2017 she was provided information on the Notice to End Tenancy itself that instructed her not to issue a 2 Month Notice.

Despite the landlord's attempt to alter the allowable reasons to end a tenancy based on a 2 Month Notice I find she did indicate, on the notice, that she will be occupying the rental unit and as such has provided a valid reason to end the tenancy for her own use, pursuant to Section 49 of the *Act*.

Section 49(8) of the *Act* stipulates that a tenant may dispute a notice issued under Section 49 by submitting an Application for Dispute Resolution within 15 days of receiving the notice. Section 49(9) states that if the tenant does not submit an Application for Dispute Resolution within 15 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit.

As there is no evidence before me that the tenant disputed the landlord's 2 Month Notice, I find the tenants are conclusively presumed to have accepted the end of the tenancy and they must vacate the rental unit in accordance with the Notice.

Section 51 of the *Act* states that a tenant who receives a notice to end tenancy under Section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

As Section 51 of the *Act* requires that the landlord owes the tenant compensation solely upon receipt of a valid and enforceable 2 Month Notice to End Tenancy for Landlord's Use of Property and in light of my findings above, I find the landlord is required to provide the tenants with compensation equivalent to 1 month's rent.

Section 51(1.1) goes on to say a tenant may withhold the amount allowed as compensation from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

I find the tenants were entitled to withhold the amount of \$1,900.00 from the landlord from their rental payment for the month of June 2017. As a result, I find the landlord is

deemed to have received payment for rent for the month of June 2017 and I dismiss this portion of her claim.

Conclusion

I find the landlord is entitled to an order of possession effective **June 30, 2017 after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** comprised of \$50.00 of the \$100.00 fee paid by the landlord for this application as she was only partially successful in her claim.

I order the landlord may deduct this amount from the security deposit held in the amount of \$900.00 in satisfaction of this claim. I note this leaves a balance of \$850.00 for the security deposit to be dispersed in accordance with the rights and obligations of both parties at the end of the tenancy.

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 21, 2017

Residential Tenancy Branch