



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPB FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession based on a breach of an agreement pursuant to section 55;
- a monetary order for loss of rent pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant:

- an order of possession of the rental unit pursuant to section 54;
- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- authorization to change the locks and/or to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

Preliminary Issue – Scope of Application and service of evidence

At the outset of the hearing, the landlord advised he was only pursuing an order of possession based upon a breach of the tenancy agreement and not pursuant to a 10 Day Notice to End Tenancy. As such the 10 Day Notice was withdrawn.

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the tenant's application for an order of possession of the rental unit, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

Issues

Were the parties in a fixed term tenancy agreement which required the tenant to vacate the rental unit at the expiry of the fixed term? Is the landlord or tenant entitled to an order of possession? Is the landlord entitled to a monetary award for loss of rent?

Background and Evidence

The tenancy began on September 1, 2016 with a monthly rent of \$3500.00 payable on the 1st day of each month. A written tenancy agreement was entered into and signed by the parties on August 26, 2016. The tenant paid a security deposit of \$1750.00 at the start of the tenancy.

The rental unit is a 6 bedroom house. The tenancy agreement was for the entire house and the tenant was free to sublet rooms and suites within the house which she did. The tenant collected rent from all her sub-tenants.

The tenancy agreement stipulated it was for an 8 month fixed term ending on April 30, 2017. The box in the tenancy agreement requiring the tenant to vacate the rental unit at the end of the fixed term is checked off. In the original copy of the tenancy agreement submitted by the landlord, both the landlord and the tenant have initialed the boxes next to the vacate clause. The tenant submitted a copy of the same agreement except in her copy her initials do not appear in the box next to the vacate clause although the vacate box is still checked. The landlord submitted an addendum to the tenancy agreement which also stipulates the tenancy is a fixed term agreement requiring the tenant to vacate at the end of the 8 month term. The addendum also stipulates there is no renewal option. The addendum has been signed by the tenant and various clauses throughout the addendum are initialed by both the tenant and the

landlord. The landlord testified a copy the signed tenancy agreement and addendum was provided to the tenant.

The landlord is requesting an order of possession based upon the tenant breaching the original fixed term agreement and overholding the rental unit since April 30, 2017. The landlord testified the tenant has repeatedly refused to vacate. The landlord also presented e-mail and text conversations which he alleges support his position the tenant was aware the lease was expiring. The landlord also submits the tenants contracts with all of her sub-tenants also expired April 30, 2017 as she was aware her contract expired on this date. The landlord testified the tenants lease was not renewed. The landlord refused to accept rent on May 1, 2017 from the tenant.

The landlord's monetary claim is for loss of rent of \$4000.00 for the month of May 2017, \$1000.00 for the month of June 2017 and \$445.00 for the month of July 2017. The landlord testified he had entered into a new lease with new tenants effective May 1, 2017 at a rate of \$4000.00 but suffered a loss for this full amount as the tenant refused to vacate. The new tenants had originally moved into the house but the landlord had to refund them the rent for May 2017 as the new tenants did not have full use of the house. For the months of June and July, the landlord is claiming a reduced amount as the new tenants also moved into the house and the tenant only had use of 2 rooms in June and 1 room in July.

The landlord clarified that the new tenants were introduced to him through the tenant. As the landlord would not renew the lease with the tenant she found some friends that were interested in leasing the house. The landlord subsequently entered into a new lease for the entire house with the new tenants effective May 1, 2017. The tenant continued to live in the rental unit and was effectively to become a sub-tenant of the new tenants. This is why the tenants originally moved into the rental unit but after 1 week due to some major disputes between the new tenants and the tenant the relationship deteriorated and they were never able to reach any agreement.

The tenant is requesting an order of possession of the rental unit on the grounds that her copy of the tenancy agreement does not have her initials next to the vacate clause. The tenant testified that her intention from the outset was to find a long term rental. She testified that in March and April of 2017 in anticipation of her lease expiring she asked the landlord if she could continue the lease and was advised she could. As she received a "verbal" o.k. from the landlord she continued to find sub-tenants. She testified the parties were never able to arrange a time to meet in order to sign a new lease. Towards the end of April, she was suddenly notified that the landlord's friend wanted to sign the lease instead. She panicked when she was informed she would not be able to renew. She now maintains that as no new agreement was signed her tenancy should revert to a month-to month and she should be granted possession of the rental unit. She acknowledged that she knew the new tenants from before and she tried to cooperate with them in the beginning to work something out. At the end of the day, they could not come to any agreement. She acknowledged that she permitted the new tenants to stay in the house in

the beginning of May although she contends they were only “sleeping over” while they attempted to negotiate some sort of agreement. When things fell apart the new tenants moved out of the rental unit for some time.

The tenant argues she should not be liable for rent for the any period after April 30, 2017 as the new tenants had moved into the house. The new tenants caused lots of disturbance to her and the subtenants. She did continue to collect the rent from her sub-tenants in the month of May although it was collected late.

Analysis

Pursuant to Section 44(1)(b) of the Act, a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides the tenant will vacate the rental unit on the date specified as the end of the tenancy.

The agreement entered into and signed by both parties required the tenant to vacate the rental unit by April 30, 2017. The box in the tenancy agreement stipulating the tenant is required to vacate the rental unit at the end of the fixed term is checked off and this is not disputed. The addendum which is signed by the tenant and also not disputed clearly stipulates the tenant is required to vacate at the end of the fixed term and there is no renewal option. I dismiss the tenant’s argument that the box in her copy of the tenancy agreement requiring her to vacate is not initialed therefore the tenancy reverted to a month-to-month tenancy. The landlord submitted the original tenancy agreement and I accept this version over the photocopy version submitted by the tenant. Even if for some reason, the tenant’s copy of the agreement did not contain an initial, I find the tenancy agreement plus the amendment clearly stipulates the tenant was required to vacate at the end of the fixed term. Further, I find the evidence and testimony of the parties supports the landlord’s position that the tenant knew the lease was not being renewed and the tenant was required to vacate. Further, it was not disputed that a new lease agreement was not entered into with the tenant. The landlord even refused to accept rent from the tenant for May 1, 2017 which was a clear indication of the landlord’s intentions.

I find the landlord only permitted the tenant to stay in the rental unit so she could come to some agreement to stay on as a sub-tenant of the new tenants. The tenant and the sub-tenants could not come to any agreement so the tenant has no right to possession of the rental unit as a tenant or a sub-tenant of the new tenants. The tenant is simply overholding. The fact that the tenant permitted these new tenants to enter and stay at the house further corroborates the landlord’s position that she knew her lease had expired.

I find the landlord is entitled to an order of possession pursuant to section 55 of the Act.

As I have found the tenant was overholding the rental unit, I accept the landlord’s claim for loss of rent as claimed totalling \$5445.00 for the months of May, June and July 2017.

The tenant's argument that she should not be responsible for any loss of rent for this period just because the new tenants that moved into the rental unit caused disturbance to her and her subtenants is a completely separate matter and was an issue identified in the tenant's application. This part of the tenant's application was dismissed with leave to reapply. I also note the landlord has already factored in the fact the tenant no longer had possession of the entire house by limiting his losses for the months of June and July 2017 to only the portion of the house the tenant remained in possession of. I also note that in making any claim for alleged loss as a result of disturbance caused by the new tenants, the tenant ought to factor in the fact that she herself clearly played a pivotal role in permitting or at least initially agreeing to have the new tenants move into the rental unit. This fact could be a mitigating factor in any potential claim the tenant may have.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$5545.00.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of **\$5545.00**. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: July 18, 2017

Residential Tenancy Branch