



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASTLE MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes O, FF (Landlords' Application)
 O (Tenant's Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by both the Landlords and the male Tenant.

The Landlords applied for "Other" issues, namely a request for an Order of Possession because the Tenants have breached an agreement with the Landlords, and to recover the filing fee from the Tenants. The male Tenant named on the Landlords' Application also applied for "Other" issues, namely a request to extend the fixed term tenancy.

An agent for the Landlords and the male Tenant appeared for the hearing and provided affirmed testimony. The parties confirmed receipt of each other's Application and each other's documentary evidence.

The hearing process was explained to the parties and they had no questions about how the proceedings would be conducted. Both parties were given a full opportunity to provide oral testimony, present evidence, make submissions to me, and to cross examine the other party on the evidence provided.

Issue(s) to be Decided

- Is the Tenant entitled to extension of the fixed term tenancy agreement?
- Are the Landlords entitled to an Order of Possession?

Background and Evidence

The parties agreed that the Tenants started renting this property on July 1, 2014. Since this time the parties extended the first fixed term tenancy twice on an annual basis.

The first agreement was entered into from July 1, 2014 to June 30, 2015. The second agreement was entered into from July 1, 2015 to June 30, 2016. The latest tenancy agreement was signed on June 15, 2016 for a tenancy to commence on July 1, 2016 and set to end on June 30, 2017. Rent for each of the extended tenancies was payable on the first day of each

month. The Tenants paid a \$580.00 security deposit on May 23, 2014 which the Landlord still holds in trust.

Both parties provided copies of the above tenancy agreements. The last one states that "The parties further agree that the tenancy remains a fixed term tenancy and the Tenant must move-out at the end of extended fixed term in accordance with the terms of the Lease Agreement"

The Tenant testified that on May 26, 2017 he received an email from the Landlords stating that they were not going to renew the tenancy past the last day of the fixed term tenancy on June 30, 2017.

The Tenant testified that this came as a shock to him because the Landlord had previously extended the lease twice before without any issues. The Tenant explained that this left him and his family scrambling to find another place to move to which has proved difficult because they are low income and are not able to find alternative accommodation in a high rent market. The Tenant explained that he is making diligent efforts to find low income housing and has been working with several agencies to do this.

The Tenant submitted that the Landlords are refusing to renew the lease out of malice and ill intent as a way to punish and get revenge because the Tenants made an application against the Landlords in September 2016 in which the Landlords were ordered to pay the Tenants monetary compensation.

The Tenant testified that he had asked an advocacy group to help me who contacted the Landlords to ask for more time to vacate the rental unit, but the Landlords failed to reply.

The Landlords' agent denied that the email sent to the Tenant on May 26, 2017 was out of revenge and as a way to give the Tenant a short amount of time to leave the rental unit. The Landlords' agent stated that the Tenant was informed at the September 2016 hearing that his tenancy was not going to be renewed and therefore the Tenant had plenty of notice and time to find another place to go to.

The Landlords' agent explained that the Landlords were contacted by an advocate for the Tenant but the Tenant was asking to move out in December 2017. However, when the Landlords replied to the Tenant stating that they could only offer three months extension, the Tenant refused this time limit and informed the Landlords that he was going to file his Application. Therefore, the Landlords' agent now seeks an Order of Possession to enforce the ending of the tenancy as June 30, 2017 has now passed.

The Landlord confirmed that the Tenant was not in any rental arrears because the Landlord had accepted rent for July 2017 for use and occupancy only. The Tenant confirmed that he had not paid his rent for August 2017 at the time of this hearing.

During the hearing, I asked the parties whether this matter could be settled by mutual agreement to end the tenancy because this would give the Tenants more time to vacate the rental unit. Accordingly, the Landlord offered to allow the tenancy to continue until the end of August 2017. However, the Tenant was not willing to accept this as he wanted to end the tenancy at the end of December 2017.

Analysis

As I was not able to get the parties to reach consensus to end the tenancy mutually, I must now make legal findings in this matter based on the provisions of the Act and on the evidence before me.

Section 44(1) of the Act provides ways in which a tenancy may end. Section 44(1) (b) of the Act stipulates that a tenancy ends 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.

The tenancy agreement provided by both parties clearly shows that the Tenants signed the agreement which contains a clause requiring the Tenants to move out of the rental unit on June 30, 2017, which is the fixed end date of the tenancy.

I informed the Tenant of the above provisions of the Act and explained that I have no authority or discretion under the Act to extend a tenancy agreement in these circumstances. Furthermore, the Act also does not allow factors such as: the Landlords' alleged failure to give the Tenant sufficient notice that the tenancy was not going to be renewed; or the inability of the Tenants to find alternative accommodation, to be taken into consideration as to whether the tenancy agreement is to be extended.

In a fixed term tenancy with a set end date requiring a tenant to move out, there is no obligation or requirement for any party to give notice, as the signed agreement is the notice that informs of when the tenancy is to end and what is to happen thereafter.

In such a case, each party bears the burden to secure a renewal prior to the fixed term tenancy. In addition, there is no requirement for a landlord to provide a reason for not wanting to renew a fixed term tenancy which requires the tenant to move out. Neither does a landlord's decision to not renew hinge on a good faith requirement.

While I understand the Tenants' situation in this matter, the Tenants had no legal right to continue the tenancy after June 30, 2017. Therefore, I find the Tenants are now over-holding the tenancy and the Tenant's Application must fail.

Section 55(2) (c) of the Act states that a landlord may request an Order of Possession of rental unit if the tenancy agreement is a fixed term tenancy that provides the tenant will vacate the rental unit at the end of the fixed term.

Based on the foregoing, I find the Tenants have breached the written tenancy agreement by over holding the tenancy past June 30, 2017. Therefore, the Landlords are entitled to an Order of Possession to enforce the ending of the tenancy.

As the Tenant has not paid rent for August 2017 at the time of this hearing, this order is effective two days after service on the Tenants. Copies of this Order are attached to the Landlords' copy of this Decision. This order must be served to the Tenants and may then be filed and enforced in the Supreme Court of British Columbia as an order of that court if the Tenants fail to vacate the rental unit.

As the Landlords have been successful in this matter, the Landlords are also entitled to recover from the Tenants the filing fee. The Landlords may achieve this relief by deducting \$100.00 from the Tenants' security deposit pursuant to Section 72(2) (b) of the Act.

Conclusion

The Tenants have breached the fixed term end date of the tenancy agreement that required them to move out on June 30, 2017. Therefore, the Tenant's Application is dismissed without leave to re-apply.

The Landlords are granted an Order of Possession effective two days after service on the Tenant. The Landlords may recover the \$100.00 filing fee from the Tenants' security deposit.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: August 01, 2017

Residential Tenancy Branch