



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB O FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for an Order of Possession at the end of a fixed term tenancy pursuant to section 55 and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Representatives for both parties attended this hearing. Both tenants attended the hearing as well as an agent for the landlord ("the landlord"). Tenant D confirmed receipt of the landlord's Application for Dispute Resolution as well as the additional evidentiary materials submitted for this hearing by the landlord. The landlord testified that the landlord did not receive the tenants' evidence package. The tenants were given an opportunity to explain when and how they served the landlord with their evidence package but they were unable to provide clear, consistent testimonial or documentary evidence to prove that the landlord was served with their evidentiary materials for this hearing.

Preliminary Matter: Service of Documents

The two tenants who attended this hearing were unable to provide clear, consistent testimonial or documentary evidence to prove that the landlord was served with their evidentiary materials for this hearing. Within the tenants' evidentiary submissions were; a copy of the residential tenancy agreement, also submitted by the landlord in accordance with the Act as well as approximately 6 transcribed text messages.

Residential Tenancy Policy Guideline No. 12 sets out the ways in which one party must serve hearing materials to another party. Policy Guideline No. 12 reinforces the special rules for service of certain documents, including but not limited to an application for dispute resolution. Policy Guideline No. 12, with respect to the terms of service at section 88 to 90 in the Act states that, when the respondent (in this case the tenants) do

not appear at a Dispute Resolution hearing, the applicant(s) (the landlords) must be prepared to **prove** service under oath.

Proper service of documents is essential to the Residential Tenancy Dispute Resolution process. Service of documents is restricted by timelines and methods of service to underscore its importance. It is essential that a party be able to prove that they have sufficiently served the documents for a Residential Tenancy Dispute Resolution hearing. In this case, I find that the tenants were very unclear on the nature and date of service of documents to the landlord. Therefore, without other evidence to support their testimony at this hearing, as well as the landlord's assertion that he has not received the tenants' evidence, I find that there was a lack of certainty with respect to service. I decline to consider the evidence submitted by the tenants but note that the bulk of the tenants' evidence is also provided by the landlord.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession at the end of a fixed term tenancy?
Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

Both parties agreed that this tenancy began on July 1, 2016 as a one year fixed term tenancy. The rental amount of \$1000.00 is payable on the first of each month. The landlord continues to hold a \$500.00 security deposit paid by the tenants at the outset of the tenancy. The landlord submitted that the fixed term tenancy was at an end and therefore the tenants are required to vacate the rental unit.

The tenants testified that the residential tenancy agreement they signed differed from the one supplied by the landlord. The tenants testified that, under the section of the tenancy agreement that addresses the length or term of the tenancy, the tenancy was to continue as a month to month tenancy. However, the landlord testified that, at the end of the fixed term, the tenancy was to end and the tenants were to vacate the rental unit. The landlord also provided undisputed testimony that the tenants did not pay rent for the months of July 2017 and August 2017 although the tenants continue to reside in the rental unit. Tenant D testified that the landlord had refused to accept rent in July and August 2017. The landlord testified that he had not refused rent.

The tenants paid partial rent for the month of June 2016. The landlord provided undisputed testimony that the reason the tenants were not required to pay full rent for

June 2016 is that they had agreed to vacate the rental unit at the end of June 2016 in accordance with the residential tenancy agreement.

The landlord's residential tenancy agreement was submitted as a photocopy of a typewritten document with the initials of both tenants. The landlord's copy dated June 28, 2016 clearly indicates that "the tenancy ends and the tenant must move out of the residential unit." The landlord noted that the document that he submitted as the residential tenancy agreement and the tenants' copy as described by the tenants at this hearing differ in that;

- the tenants' agreement has initials of just one (not both) tenants;
- the dates are written differently on the two documents; and
- the tenants' copy claims to have been changed from a fixed term ending at the end of the term to the option of a month to month tenancy to continue the tenancy.

The landlord noted that the tenants' copy was written in pen while his submission was a copy. He stated that he would not have given the original copy to the tenants. The landlord testified that at no point did he agree that the tenancy will continue after the end of the fixed term.

Analysis

There is evidence, in the form of the residential tenancy agreement submitted for this hearing and the supporting testimony of the landlord that this tenancy began and continued as a fixed term tenancy. Residential Tenancy Policy Guideline No. 30 provides direction on the definition and terms of a fixed term tenancy:

A fixed term tenancy is a tenancy where the landlord and tenant have agreed that the tenancy agreement will begin on a specified date and continue until a predetermined expiry date...

I find that the tenancy was set to end, in accordance with the signed and initialled tenancy agreement as well as the mutual agreement discussed by the parties regarding partial payment of June rent. Section 44 of the Act includes information on how a fixed term tenancy ends,

44 (1) A tenancy ends only if one or more of the following applies:

...(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...

Policy Guideline No. 30 also indicates that a landlord and tenant may agree to renew a fixed term tenancy for another fixed term. In this form of tenancy, a term is fixed for the assurance of both parties. With few exceptions, this tenancy will continue to the end of its term, allowing the tenant and landlord the security that comes with this fixed period of time. This form of tenancy also has a scheduled end (or expiration) date with the option to renew if both parties agree to set a new term for the tenancy either by agreeing in advance to a continuation on a month to month basis or by the creation of another fixed term tenancy in writing.

In this case, the parties disagree as to whether the residential tenancy agreement requires the tenancy will end and the tenant will vacate the rental unit on or before July 1, 2017 or whether it will continue as a month to month tenancy. I was provided with testimony of two distinctly different tenancy agreements by each party. However, I was provided with only one copy of the residential tenancy agreement as evidence in accordance with the Residential Tenancy Agreement. I accept the documentary evidence of the landlord as the best evidence to determine the term of this tenancy.

Given the conflicting testimony, I must consider the credibility of each party as I have assessed it at this hearing. In addition to the manner and tone (demeanour) of the parties' evidence, I have considered their content, and whether it is consistent with the other events that took place during (or at the end of) this tenancy. The demeanor of the parties at the hearing, particularly the demeanor of the agent for the landlord attending this hearing assisted in convincing me of the credibility of the landlord's position.

The landlord's agent answered all questions asked in a calm and candid manner, and never wavered in the landlord's version of what happened. On the contrary, the testimony of the tenants was, from the outset of the hearing, inconsistent between the two of them as well as with some of the evidence provided at this hearing. Furthermore, their description of service of their documentary evidence at the outset of this hearing provided an initial insight into the lack of consistency of the testimony to follow during the course of the hearing.

The tenants argue that their tenancy should continue as a month to month tenancy at the end of the fixed term. However, I find that the tenants have provided insufficient evidence to support that position. I find that the landlord ensured that the tenants were aware the landlord intended to rely on the predetermined expiry date – the end of the

fixed term tenancy. The documentary evidence of communication between the two parties confirms that the landlord intended to have the tenancy come to an end.

The correspondence between parties shows that the tenants were well aware of the landlord's intention that they vacate the residence and that the landlord would reduce their rent for June in order to ensure their compliance in ending the tenancy and vacating the rental unit. I find that the landlord has not made any agreement with the tenants to renew this rental agreement and continue this tenancy.

As the tenants were obliged to vacate the rental unit on July 1, 2017 in accordance with their tenancy agreement, I find that the landlord is entitled to an Order of Possession.

As the landlord was successful in their application, I find that the landlord is entitled to recover the \$100.00 filing fee for this application.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). 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.

I issue a **monetary order to the landlord in the amount of \$100.00.**

The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenants 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: August 30, 2017

Residential Tenancy Branch