



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SANDHILL PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB FF

Introduction

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

The tenants did not attend this hearing, although I waited until 9:55 am in order to enable the tenants to connect with this teleconference hearing scheduled for 9:30 am. The landlord attended the hearing and was given a full opportunity to be heard, to present testimony, and to make submissions.

The landlord testified that he had served the tenants personally with a 10 Day Notice to End Tenancy however he testified that he relies on the residential tenancy agreement fixed term clause in his application for an Order of Possession. The landlord testified that he served the tenants each by registered mail with the Application for Dispute Resolution ("ADR") including notice of the hearing and evidence for his application on August 7, 2017. The landlord submitted Canada Post receipts to support his testimony. I find that the tenants were deemed served with the landlord's ADR package on August 12, 2017 (5 days after the landlord's registered mailing) in accordance with section 89 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the residential tenancy agreement fixed term clause? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence: MOVE THIS AROUND/EDIT LOTS

The landlord submitted a copy of the residential tenancy agreement as evidence for this hearing. The tenancy began on August 2014 with a series of successive fixed terms ending with a fixed term from August 1, 2016 to July 31, 2017. The landlord testified that he did not require a security deposit from the tenants. He testified that the rental amount of \$1500.00 was payable on the first of each month. He testified that the tenants were planning on buying the (rental unit) home within the first 2 years of their tenancy. He testified that, as they had not made arrangements to buy the home, this final fixed term was set with the understanding of both parties that this fixed term would end the tenancy so that he could attempt to sell the house. The landlord requests an Order of Possession for the end date of this agreement.

The landlord referred to the copy of the current tenancy agreement with an end date of July 31, 2017. The residential tenancy agreement reads that, "At the end of this fixed length of time...the tenancy ends and the tenant must move out of the residential unit". This term of the tenancy agreement is initialed by both parties: a landlord and 2 tenants.

The landlord testified that, in verbal conversation as well as by text and email correspondence, he reminded the tenants that they were scheduled to vacate the rental unit on July 31, 2017. He testified that, at no point did he tell the tenants that he would continue the tenancy at the end of this particular tenancy agreement.

Analysis

There is evidence in the form of the residential tenancy agreements and the landlord's undisputed testimony at this hearing that proves that this most recent tenancy agreement began as a fixed term tenancy scheduled to end on July 31, 2017. 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...

Section 44 of the *Act* addresses how a tenancy ends, including a fixed term tenancy:

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. However, without the landlord's written agreement to renew the tenancy, the default position remains that the tenant is required to vacate the premises at the end of the fixed term. I accept the landlord's evidence that, despite receiving payment of rent after the end of tenancy date, he continued to advise the tenants that they were required to move out and that he would not agree to another term of tenancy. He testified that the tenants generally provided rent by email money transfer and he would send an email to acknowledge receipt and confirm that the tenants must vacate the rental unit.

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. In this case, the residential tenancy agreement indicates that the tenancy will end and the tenant will vacate the rental unit on July 31, 2017.

The tenants did not attend this hearing to dispute the landlord's application for an Order of Possession. Even it were the case that the tenants acted within reason to assume that their tenancy could continue (as it had been renewed as a successive fixed term in the past), they were not in a position to do so considering their signing of the most recent fixed term tenancy agreement. I accept the testimony of the landlord and the supporting documentary evidence (the residential tenancy agreement) that the landlord and both of the tenants signed the tenancy agreement and initialled the fixed term clause in the agreement.

The landlord testified that the tenants were advised that he intended to rely on the end of the fixed term tenancy. I accept his undisputed testimony in this regard. He testified, with detail as to his conversations with the tenants regarding the possible sale and/or the end of the tenancy. He also testified that, when receiving rent, he ensured that the tenants were aware that he still intended that the tenancy would end. Furthermore, the landlord provided a 10 Day Notice to the tenants as an indication that he intended to end the tenancy.

I find that the landlord has not made any agreement with the tenants to renew this rental agreement and continue this tenancy. I accept as the most reliable evidence: the singular document existing to describe the terms of the agreement between these two parties and I find that the document, signed by the parties requires that the tenants vacate the rental unit when the tenancy ends July 31, 2017. As the tenants have not vacated the rental unit in accordance with the terms of the residential tenancy agreement, I find that the landlord is entitled to a 2 day Order of Possession.

Conclusion

I issue a 2 day Order of Possession to the landlord. 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.

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: September 26, 2017

Residential Tenancy Branch