



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, OLC, FFT

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy
- b. An order that the landlord comply with the Act, regulations and/or tenancy agreement.
- c. An order to recover the cost of the filing fee.

The landlord failed to appear at the scheduled start of the hearing which was 9:00 a.m. on April 19, 2018. The tenant applicant was present and ready to proceed. I left the teleconference hearing connection open and did not start the hearing until 10 minutes after the schedule start time in order to enable the landlord to call in. The landlord failed to appear. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I then proceeded with the hearing. The tenant was given a full opportunity to present affirmed testimony, to make submissions and to call witnesses.

On several occasions the landlord has e-mail the tenant demanding that the tenant sign a fixed term tenancy agreement that provides that he must vacate on the end of tenancy date. These demands that the tenant vacate are not in the approved form. I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord carries on business on March 12, 2018. The tenant testified a search of the Canada Post records indicates that it was accepted on March 15, 2018. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy?
- b. Whether the tenant is entitled to an order that the landlord comply with the Act, regulations and/or tenancy agreement?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on December 1, 2016 when the tenant signed a 6 month fixed term tenancy agreement that provided that the tenant would have to vacate on May 31, 2017. The tenant did not vacate and continued to pay the rent. The landlord accepted the monthly rent payments. The rent was \$720 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$360 at the start of the tenancy.

In January 2018 the landlord sent an e-mail to the Tenant demanding that the tenant signed another fixed term tenancy agreement that would provide the tenant would have to vacate at the end of the fixed term. The landlord has also demanded the tenant pay a rent increase that does not comply with the provisions of the Residential Tenancy Act. On March 11, 2018 the landlord demanded the tenant vacate the rental unit because he failed to sign a fixed term tenancy agreement.

Preliminary Matter:

I determined the Residential Tenancy Act applies. Section 2 of the Act provides as follows:

What this Act applies to

2 (1) Despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, rental units and other residential property.

(2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.

The tenant testified the landlord often rents room to international students who attend Vancouver Community College.

What this Act does not apply to

4 This Act does not apply to

...

(b) living accommodation owned or operated by an educational institution and provided by that institution to its students or employees,

There is no evidence that the living accommodation is owned or operated by the educational institution. As a result I determined that I have jurisdiction to consider the Tenant's application.

Analysis:

The tenant testified that he was considered that the landlord might be taking steps to end the tenancy on the basis of the e-mails the landlord has sent him demanding that he vacate the rental unit. The e-mails are not in the approved government form.

Section 52 of the Act provides as follows:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form. (my emphasis)**

I determined that the e-mails sent by the landlord are not in the approved form. As a result I determined they are null and void for the purpose of ending a tenancy.

The landlord seeks to end the tenancy on the basis that the tenant signed a fixed term tenancy agreement that provided that he must vacate at the end of the fixed term. The end of tenancy date of the fixed term tenancy was May 31, 2017. Policy Guideline #20 includes the following:

“D. RENEWING A FIXED TERM TENANCY AGREEMENT

A landlord and tenant may agree to renew a fixed term tenancy agreement with or without changes, for another fixed term. If a tenancy does not end at the end of the fixed term, and if the parties do not enter into a new tenancy agreement, the tenancy automatically continues as a month-to-month tenancy on the same terms. Rent can only be increased between fixed-term tenancy agreements with the same tenant if the notice and timing requirements for rent increases are met.

The end of tenancy date in the fixed term tenancy agreement was May 31, 2017. The tenant continued to reside in the rental unit and the landlord accepted the rent. As a result I determined the tenancy has become a month to month tenancy.

Recent changes to the Residential Tenancy Act limit the use of a fixed term tenancy agreement which requires that the Tenant must vacate the rental unit at the end of the fixed term as set out in Policy Guideline #20 as follows:

“A tenancy agreement may only include a requirement that the tenant vacate the rental unit at the end of the fixed term if:

- The tenancy agreement is a sublease agreement⁸; or
- The tenancy is a fixed term tenancy in circumstances prescribed in section 13.1 of the Residential Tenancy Regulation⁹. “

Section 13.1 of the Regulations provide as follows:

Fixed term tenancy — circumstances when tenant must vacate at end of term

13.1 (1) In this section, "**close family member**" has the same meaning as in section 49 (1) of the Act.

(2) For the purposes of section 97 (2) (a.1) of the Act [*prescribing circumstances when landlord may include term requiring tenant to vacate*], the circumstances in which a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate a rental unit at the end of the term are that

- (a) the landlord is an individual, and
- (b) that landlord or a close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term.

The circumstances set out in section 13.1 of the Regulations do not apply in this case.

As the Residential Tenancy Act applies I order that the landlord comply with the Act and regulations if the landlord wishes to make a rent increase.

As the tenant has been successful in this application I order that the landlord pay to the tenant the sum of \$100 for the cost of the filing fee.

Conclusion:

In conclusion I made the following orders:

1. I order that the e-mails sent by the landlord purporting to end the tenancy are of no force and effect.
2. I order that the landlord comply with the Act, Regulations and tenancy agreement.
3. I order that the landlord pay to the tenant the sum of \$100 for the cost of the filing fee such sum may be deducted from future rent.

This decision is final and binding on the parties.

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: April 19, 2018

Residential Tenancy Branch