



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC

Introduction:

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

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

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord. 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 tenants are entitled to an order that the landlord comply with the Residential Tenancy Act, regulations and order tenancy agreement.
- c. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

On April 18, 2017 the parties entered into a 4 month fixed term tenancy agreement that provided that the tenancy would start on May 1, 2017 and end on August 31, 2017. The written tenancy agreement included the clause that the tenants must vacate at the end of the fixed term. The rent was \$1995 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$997.50. The tenancy agreement

also included the following clause "Tenants are fully aware that the building will be demolished and will not receive tenant relocation assistance." Both parties acknowledged this referred to the right of the tenants to the equivalent of one month rent.

This was subsequently extended for a further 8 months on the same terms and conditions. The extension of the written agreement states the tenancy is to end on April 30, 2018.

On October 26, 2017 legislation was passed relating to fixed term tenancies to come into effect on December 13, 2017.

On March 21, 2018 the tenants received an e-mail from the landlord that the fixed term was coming to an end on April 30, 2018 and the parties should arrange a time to conduct an outgoing inspection.

The landlord has applied to the City of Vancouver for a Building Permit and a demolition permit. There have been delays. The landlord stated he expects to get final approval to demolish the property in July or August of 2018 although it could be longer.

The tenant stated they are prepared to leave when the landlord is ready to demolish the rental unit provided they get proper notice from the landlord. However, they wish to remain in the rental unit until the landlord is in a position that the rental property can be demolished. They further submit that the law does not permit the parties to contract out of the provisions of the Residential Tenancy Act and by law the landlord owes the tenant the equivalent of one month rent even though there is a provision in the tenancy agreement that they are not entitled to it.

The landlord stated he is prepared to permit them to remain in the rental unit until they are ready to demolish it. However, he submits the tenants have been receiving a reduced rent less than market value and that they have agreed they are not entitled to one month free rent. The landlord submits the tenants are taking advantage of him and the reason the changes to the legislation are unrelated to his situation.

The Law:

The relevant provisions of the Residential Tenancy Act include the following.

Section 5 provides:

This Act cannot be avoided

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

How a 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, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

.....

Section 97(2)(a.1) provides as follow:

Power to make regulations

97 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the Interpretation Act.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

(a) exempting tenancy agreements, rental units or residential property from all or part of this Act;

(a.1) prescribing 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;

(b) prescribing the rate of interest payable on security deposits and pet damage deposits;

Section 13.1 of the Residential Tenancy Act 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.

[en. B.C. Reg. 225/2017, App. 2, s. 1.]

The amendment dealing with fixed term tenancies was passed on October 26, 2017. The Act recognized there would be a situation where parties entered into a fixed term tenancy agreement that had a vacate clause prior to the passing of the legislation. The Act also includes a transition provision in section 104.3 which provides as follows:

Transition — fixed term tenancy agreements

104.3 (1) If a fixed term tenancy agreement entered into before this section comes into force requires that a tenant must vacate the rental unit on a specified date, the requirement to vacate the rental unit ceases to have effect as of the date this section comes into force, except

(a) if the tenancy agreement is a sublease agreement,

(b) if circumstances prescribed under section 97 (2) (a.1) apply, or

(c) if, before the day this Act receives First Reading in the Legislative Assembly,

(i) the landlord entered into a tenancy agreement, to begin after the expiry of an existing tenancy agreement that includes a requirement to vacate the rental unit, with a new tenant for the rental unit, or

(ii) the director granted an order of possession to the landlord on the basis of a requirement to vacate the rental unit in an existing tenancy agreement.

(2) For the purposes of enforcing a requirement that remains in effect under subsection (1), sections 44 and 55 continue to apply as they read immediately before this section comes into force.

Section 51 of the Act provides as follows:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The parties are referred to Policy Guideline 30 for a more detailed explanation of the change to the legislation and how it affects a fixed term tenancy.

A. LEGISLATIVE FRAMEWORK

Section 1 of the Residential Tenancy Act and the Manufactured Home Park Tenancy Act (the Legislation) defines a fixed term tenancy as a tenancy under a tenancy agreement that specifies the date on which the tenancy ends. In other words, a fixed term tenancy has a definite commencement date and expiry date. Neither party may end a fixed term tenancy early, except under the circumstances described in section C of this guideline.

Effective December 11, 2017, a tenancy agreement may only include a requirement that the tenant vacate the rental unit at the end of a fixed term if:

- The tenancy agreement is a sublease agreement¹
or
- The tenancy is a fixed term tenancy in circumstances prescribed in section 13.1 of the Residential Tenancy Regulation²

Transitional provisions in the Legislation apply this change retrospectively.³ If a fixed term tenancy agreement is currently in effect and contains a clause that requires a tenant to vacate the rental unit or manufactured home site on a specified date, that clause is no longer enforceable in most circumstances.

The Legislation allows for limited circumstances where a vacate clause in a tenancy agreement is enforceable⁴

:

- The tenancy agreement is a sublease agreement;
- The tenancy is a fixed term tenancy in circumstances prescribed in section 13.1 of the Residential Tenancy Regulation; or
- If one of the following occurred before October 26, 2017⁵

:

- (i) the landlord entered into a tenancy agreement, to begin after the expiry of an existing tenancy agreement that includes a requirement to vacate the rental unit⁶, with a new tenant for the rental unit, or
- (ii) the director granted an order of possession to the landlord on the basis of a requirement to vacate the rental unit in an existing

tenancy agreement.

Analysis:

I made the following determinations:

- The obligation to pay the equivalent of one month rent under section 51 of the Act is triggered by the landlord serving a 2 month Notice to End Tenancy under section 49 of the Act.
- Prior to the change in legislation that was passed on October 26, 2017 the landlord could end a fixed term tenancy (provided the tenancy agreement included a vacate clause) at the end of the fixed term without the need to serve a 2 month Notice to End Tenancy.
- The change in the legislation permits a landlord to end a fixed term tenancy (that includes a vacate clause) only in limited situations where the tenancy is a sublease or where the landlord is an individual and the landlord or a close family member is to move in. The transition provision extended that to a situation as provide under section 104.3 to where the landlord entered into a tenancy agreement with a new tenant to begin after the expiry of an existing tenancy or where the director has granted an order of possession.
- I determined those situations do not exist in this case and the landlord does not have the legal right to end the tenancy on the basis of the expiry of the fixed term even though the parties had agreed to it prior to the passing of the legislation.

Section 44 of the Act provides as follows:

“How a tenancy ends

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

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [tenant's notice];

(i.1) section 45.1 [tenant's notice: family violence or long-term care];

(ii) section 46 [landlord's notice: non-payment of rent];

- (iii) section 47 [landlord's notice: cause];
- (iv) section 48 [landlord's notice: end of employment];
- (v) section 49 [landlord's notice: landlord's use of property];
- (vi) section 49.1 [landlord's notice: tenant ceases to qualify];
- (vii) section 50 [tenant may end tenancy early];

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.”

- In my view should the obligation to pay the equivalent of one month rent under section 51 of the Act would be triggered if the landlord chose to end the tenancy by serving a 2 month Notice to End Tenancy under section 49 of the Act even though the tenancy agreement included a clause stating the tenants agree they are not entitled to relocation assistance as the Act provides that the parties are not permitted to contract out of the provisions of the Act. .

Determination and Orders:

In summary I made the following determinations:

- The letter given to the tenants purporting to end the tenancy on April 30, 2018 is not effective to end the tenancy.
- The obligation to pay the equivalent of one month rent under section 51 of the Act is triggered should the landlord chose to end the tenancy by giving a 2 month Notice to End Tenancy under section 49 of the Act.

As the tenants have been successful with this application I ordered that the landlord shall reimburse the tenants the sum of \$100 for the cost of the filing fee such sum may be deducted from future rent.

The parties are referred to the Residential Tenancy Branch website which outlines more recent amendments dealing with the notices to end of tenancy for demolition of the rental property.

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: June 05, 2018

Residential Tenancy Branch