



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for a Mutual Agreement to End a Tenancy, pursuant to section 55 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Landlord C.C. spoke on behalf of the landlords and is herein referred to as "the landlord". Tenant L.T. spoke on behalf of the tenants and is herein referred to as "the tenant".

As both parties were in attendance, service of documents was confirmed. The parties confirmed that the landlord's Notice of Hearing was served on the tenant, in accordance with section 89 of the *Act* and that both parties were in receipt of a copy of the Mutual Agreement to End a Tenancy form submitted into evidence by the landlord.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

There was no written tenancy agreement submitted into evidence, however, both parties agreed to the following facts regarding the tenancy agreement.

This tenancy began on September 1, 2016 as a six-month fixed term tenancy which converted to a month to month tenancy. A monthly rent of \$1,850.00 is payable on the first day of each month. A security deposit of \$955.00 was paid by the tenant upon moving in and continues to be held by the landlord.

Both parties agreed that at the end of March 2018, they had exchanged text messages and had a verbal discussion about ending the tenancy. The tenant's rental unit is on the ground floor of the rental property and the landlord testified that there had been conflict between the tenant and the upstairs rental unit occupants. The tenant confirmed that he had issues with the noise created by the upstairs occupants and their use of the garbage bins.

The landlord stated that the upstairs occupants moved out of the rental unit on March 31, 2018 as a result of the conflict with the tenant.

Both parties agreed that on March 30, 2018, the parties signed a Mutual Agreement to End a Tenancy (Mutual Agreement). The landlord submitted into evidence a copy of the Mutual Agreement, dated March 30, 2018, which specifies that the tenants agree to vacate the rental unit by 2:00 pm on June 30, 2018. Both parties agreed that the landlord had written three additional conditions on the agreement, which were agreed to by both parties. These additional conditions pertain to the landlord refunding one month's rent and returning the balance of the deposit to the tenants, and the tenants vacating their parking spot and providing access to the garbage and recycle bins.

The tenant testified that in his discussion with the landlord about ending their tenancy agreement, the landlord had told him that he was tired of being a landlord and that he wanted to end the tenancy with the tenant as he no longer wanted to be a landlord which was causing him stress to the detriment of his health.

The tenant stated that it was for these reasons he agreed to sign the Mutual Agreement. The tenant stated that new upstairs rental unit occupants moved in at the beginning of May 2018. The tenant claims that he would not have signed the Mutual Agreement if he had known the landlord was not ending the tenancy for the reasons he stated to the tenant.

The landlord stated that although stress was part of the reason, he wanted to end the tenancy with the tenant due to his complaints about dealing with noise from the upstairs occupants. The landlord expressed that he thought the tenant should find other accommodations where he would not have to deal with noise from an upstairs rental unit.

The tenant has stated that he no longer wants to live in the rental unit and has found more suitable accommodations, however, he is not able to move into those accommodations until July 30, 2018. The tenant argues that he has to undertake a practicum out of town and has responsibility for his mother and niece who also live in the rental unit, and he cannot move out before the end of July 2018.

The landlord explained that he has already signed a tenancy agreement with a new tenant to move into the tenant's ground floor rental unit at the beginning of July 2018. Therefore, the landlord is seeking an order of possession to enforce the Mutual Agreement, in the event the tenant does not abide by the agreed upon vacate date of June 30, 2018.

Analysis

Section 44 of the *Act* states that a tenancy ends if the landlord and tenant agree in writing to end the tenancy.

Section 55(2)(d) of the *Act* states that a landlord may request an order of possession for a rental unit when the landlord and tenant have agreed in writing that the tenancy is ended.

In this case, both parties provided undisputed testimony that a Mutual Agreement to End a Tenancy, completed using an approved Residential Tenancy Branch form, was signed by both the landlord and the tenants on March 30, 2018, as submitted into evidence by the landlord.

The basis of the tenant's dispute is that he signed the agreement because he thought the landlord wanted to end the tenancy due to health issues and a desire to retire from being a landlord. When the tenant discovered the landlord intended to continue in his role as a landlord, but with other tenants, the tenant argued that he had signed the agreement under false pretenses.

The tenant has expressed that he has no desire to continue the tenancy and in fact has found other more suitable accommodations. His request in this hearing was to be provided with an extension of time in the current tenancy until his new accommodations become available July 30, 2018.

Residential Tenancy Policy Guideline 11. Amendment and Withdrawal of Notices provides some guidance in consideration of disputes in which a determination must be made on whether an end to a tenancy has been waived.

A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties.

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Express waiver arises where there has been a voluntary, intentional relinquishment of a known right. Implied waiver arises where one party has pursued such a course of conduct with reference to the other party so as to show an intention to waive his or her rights. Implied waiver can also arise where the conduct of a party is inconsistent with any other honest intention than an intention of waiver, provided that the other party concerned has been induced by such conduct to act upon the belief that there has been a waiver, and has changed his or her position to his or her detriment. To show implied waiver of a legal right, there must be a clear, unequivocal and decisive act of the party showing such purpose, or acts amount to an estoppel.

In this case, I find that the landlord's intention regarding his unequivocal desire to end the tenancy with the tenant has been clear from the beginning of his negotiations with the tenant regarding an end date of the tenancy. Whether or not the landlord was honest regarding his rationale behind his desire to end the tenancy is unclear, however, it is not a relevant factor in determining whether or not there was a clear intention to end the tenancy on the agreed upon date of June 30, 2018.

Further, I do not find that the landlord has undertaken any actions to imply a waiver of his original intention to end the tenancy, and therefore, I find no grounds on which a claim can be made that the tenancy has been reinstated and should continue beyond the agreed upon end date of June 30, 2018 provided in the Mutual Agreement.

Based on the testimony and documentary evidence, and on a balance of probabilities, I find there is sufficient evidence to demonstrate that the parties entered into a Mutual Agreement to end the tenancy, effective June 30, 2018. I accept the landlord's

submission that the tenants do not intend to vacate the unit on the effective date to end the tenancy in the Mutual Agreement.

Section 55(3) of the *Act* provides that an order of possession may be granted to a landlord before or after the date when a tenant is required to vacate a rental unit, and that the order takes effect on the date specified in the order.

The effective date for the tenants to vacate the rental unit is noted on the Mutual Agreement as June 30, 2018. I grant the landlord an Order of Possession dated June 30, 2018 to be served on the tenants only if they fail to vacate the rental unit by this date.

Conclusion

The landlord is granted an Order of Possession to be served on the tenants by the landlord only if the tenants fail to vacate the rental unit by 2:00 p.m. on June 30, 2018. Should the tenants 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: June 4, 2018

Residential Tenancy Branch