



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OLC

Introduction

On May 4, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") asking that the Landlord comply with the Act, Regulation, or Tenancy Agreement.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Tenants entitled to an order requiring the Landlord to comply with the Act, Regulation or the tenancy agreement?

Background and Evidence

The Landlord and Tenant both testified that they entered into a fixed term tenancy that began on September 1, 2016, to continue until April 30, 2018. The tenancy agreement between the parties provides that at the end of this time the tenancy is ended and the Tenants must move. This vacate term of the agreement is initialed by the Landlord and Tenant.

Rent in the amount of \$1,725.00 is to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$825.00.

The Tenants testified that the Landlord contacted them on March 27, 2018, regarding the tenancy agreement. The Landlord wanted the Tenants to enter into a new lease agreement.

The Tenants testified that they informed the Landlord that they are not moving out of the rental unit and they do not want to sign a new fixed term tenancy agreement. The Tenants informed the Landlord that they want the tenancy to continue as a month to month tenancy. The Tenants testified that they provided an internet link to the Landlord on the legislation that permits the Tenants to remain in the unit on a month to month basis.

The Tenants testified that the Landlord responded by acknowledging that they do not need to move unless he needs to use the unit for himself or his family.

The Tenants testified that the Landlord informed them that he prefers a fixed term tenancy agreement and that the going rate for the unit is \$2,000.00 per month. The Landlord proposed a fixed term agreement with a 4% increase on the current rent.

The Tenants testified that the Landlord persisted with his attempts to push a fixed term tenancy agreement on the Tenants. They submitted that when they did not agree, the Landlord told them he will be taking possession of the unit because the tenancy agreement requires them to move out. The Tenants sent the Landlord a letter in response to what they considered to be an illegal eviction notice.

The Tenants submitted that the Landlord's poor behaviour escalated and on April 30, 2018, the Landlord attended the property on a couple of occasions and continuously rang the doorbell, pounded on the door, and peeked in the windows. The Tenants submitted that the Landlord left a threatening voicemail on their phone in which he said he needed to serve the Tenants with a notice of rent increase, or else the Tenants will not be happy with what will happen.

The Tenants submitted that they are troubled by the Landlord's actions and his threats to sign a new agreement or face eviction. The Tenants submit that the Landlord wanted to increase the rent without issuing the proper 3 months' notice required under the Act.

The Tenants submitted that the actions of the Landlord have had a significant impact on their quiet enjoyment of the rental property. The Tenants submitted that they have suffered stress, strain, and loss of focus. The Tenant Ms. YG, was experiencing stomach pain and saw her doctor.

The Tenants submitted that they were not feeling safe in their home so they called the Residential Tenancy Branch and decided to apply for dispute resolution.

The Tenants submitted that regardless of whether the Landlord's behaviour was due to malice or ignorance, the Landlord needs to comply with the Act.

In response to the Tenants' testimony, the Landlord testified that he contacted the Tenants to remind them that the lease was coming due and asked them to sign a new lease. He submitted that he asked the Tenant how much he wanted to pay.

The Landlord testified that he likes to have Tenants sign fixed term tenancy agreements because they provide stability. The Landlord testified that the Tenants previously renewed the tenancy by agreeing to a new fixed term lease.

The Landlord submitted that he felt there was miscommunication between him and the Tenants because while the legislation provides that the Tenants do not have to enter into a fixed term tenancy, the Tenants can still agree to do so.

The Landlord submitted that he told the Tenant that he understood that the vacate clause of the tenancy agreement had been eliminated.

The Landlord testified that he called the Residential Tenancy Branch and was told that because his tenancy agreement contains a vacate clause and is initialled he can take possession of the unit without issuing a notice to end tenancy. The Landlord testified that he was acting on the information he had received, and he now understands that the information was incorrect.

The Landlord testified that he told the Tenants that he wanted a fixed term tenancy and they would get a 4% increase or else he would move himself into the unit after giving the proper notice and compensation to the Tenants.

The Landlord testified that he attended the rental property on April 30, 2018, for the purpose of serving the Tenants with a notice of rent increase. He submitted that he rang the bell, knocked, and peeked in the windows. He submitted that he wanted to serve the notice in person because he did not want to post it to the door and have it be deemed received three days later. The Landlord testified that if the Tenants felt threatened they should have called the police.

The Landlord submitted that the email he sent the Tenants that he was taking possession of the unit is not an official notice to end tenancy.

The Landlord testified that he never threatened the Tenants and would never harm the Tenants. The Landlord submitted that he does not know why the Tenants applied for dispute resolution on May 4, 2018, when the tenancy has now reverted to a month to month tenancy.

Analysis

Section 44 of the Act provides that a tenancy ends in prescribed circumstances when there is a fixed term tenancy agreement that requires the Tenant to vacate the rental unit at the end of the term. Section 104.3 of the Act provides that a requirement of a fixed term tenancy agreement for a Tenant to vacate the rental unit ceases to have effect, except when the tenancy agreement

is a sublease agreement, or when the Landlord has entered into a tenancy agreement with a new tenant for the rental unit before the Act received first reading in the Legislative Assembly.

Section 13.1 of the Residential Tenancy Regulation provides 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. The circumstances are:

- (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. **[my emphasis]**

Section 44(3) of the Act provides that if the tenancy agreement does not require the tenant to vacate the rental unit at the end of the term, and if the parties do not enter into a new tenancy agreement, the tenancy continues as a month-to-month tenancy on the same terms.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

With respect to the fixed term tenancy agreement, there are no circumstances present which required the Tenants to vacate the rental unit at the end of the fixed term tenancy. The vacate clause in their tenancy agreement ceases to have effect.

At the time of entering into the tenancy agreement there was no term that Landlord intends in good faith to occupy the rental unit at the end of the term.

Despite the numerous attempts by the Landlord to compel the Tenants to enter into a new fixed term tenancy agreement, the Tenants have the right to remain in the rental unit on a month to month basis on the same terms. I find that the tenancy continued as a month to month tenancy as of May 1, 2018.

Since the tenancy has continued on a month to month basis, the Landlord is at liberty to issue a 2 Month Notice To End Tenancy For Landlord's Use Of Property. Should that occur, the Tenants have the right to dispute the Notice if they feel the notice is not issued in good faith. Since a 2 Month Notice to end tenancy has not been issued, the issue of whether or not there is an ulterior motive for ending the tenancy is not before me.

I order the Landlord to comply with section 44(3) of the Act which permits Tenants the right to continue a tenancy on a month to month basis where there are no circumstances present that require Tenants to vacate at the end of the term.

The Tenants' application does not contain a request for compensation due to a loss of quiet peaceful enjoyment. However, I caution the Landlord that acting in an aggressive manner by

making continuous phone calls, banging on the Tenants' doors, and peeking in windows could result in a finding of a breach of the covenant of peaceful enjoyment and put the Landlord at risk to pay compensation to Tenants.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were successful with their application, I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution. I authorize the Tenants to withhold \$100.00 from one future rent payment.

Conclusion

I order the Landlord to comply with section 44(3) of the *Act* which permits Tenants the right to continue a tenancy on a month to month basis where there are no circumstances present that require Tenants to vacate at the end of the term.

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: July 4, 2018

Residential Tenancy Branch