



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”) and for the recovery of the filing fee paid for this application.

Two agents for the Landlord and legal counsel were present (the “Landlord”), as were the two Tenants and a family member of one of the Tenants (the “Tenants”). The Landlord confirmed that they were served in person with the Notice of Dispute Resolution Proceeding package, along with copies of the Tenant’s evidence. The Tenants confirmed that they were served in person with copies of the Landlord’s evidence.

All parties were affirmed to be truthful in their testimony and were provided the opportunity to present evidence and testimony, as well as to ask questions of the other party.

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.

Preliminary Matters

The Landlord testified that they represent the strata corporation that is responsible for the rental property. A new strata council was elected for January 1, 2018 and the strata corporation took over the property in February 2018 after the development company who was previously responsible for the property sold the last lot.

The Landlord listed as a respondent on this application was the name of an agent for the Landlord instead of the business name. This was clarified during the hearing and the agent for the Landlord confirmed that the name of the business should be the Landlord. The application was amended in accordance with Section 64(3)(c) of the *Act*.

The Tenants also clarified their address during the hearing and it was different than the dispute address listed on the application. As such, the Tenants' address was also amended on the application in accordance with Section 64(3)(c) of the *Act*.

Issue to be Decided

Should the Two Month Notice to End Tenancy for Landlord's Use of Property be cancelled?

If the Tenants should fail in cancelling the Two Month Notice to End Tenancy, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord stated that the Tenants were living in the rental unit prior to them taking over. A tenancy agreement was signed with the Tenants on January 1, 2018, but the Landlord testified that the tenants moved into the unit prior to this. The Landlord submitted that the person who signed the tenancy agreement on behalf of the Landlord, did not have the authority to sign for the Landlord. They also submitted that the signatory, named as the office manager, was representing a company that also did not have authority to sign the tenancy agreement or make arrangements regarding rentals on the property.

The tenancy agreement submitted into evidence was signed on January 1, 2018 for a fixed term of one year, set to end on December 31, 2018. Rent was set at \$1,000.00 and a security deposit in the amount of \$500.00 was to be paid to the Landlord. The Landlord confirmed that a \$500.00 security deposit was paid.

The Tenants reside in a rental unit that is above the clubhouse on a property for recreational vehicles (RV). The Landlord provided testimony that since the property is zoned as an RV park, they can only sign month to month tenancies, not fixed term tenancies.

Since they submitted that the person who signed the tenancy agreement for the Landlord did not have authority to lease the property, nor did the company she was representing, they believe that the tenancy agreement is a nullity.

The Landlord stated that rent was increased on May 1, 2018 to \$1,040.00 and that the rent is currently paid to the property manager who is employed by their company. A letter dated January 25, 2018 was submitted into evidence. The letter stated that rent will be increased from \$1,000.00 to \$1,040.00 per month, beginning on May 1, 2018. The Landlord submitted that the rent increase shows that a fixed term tenancy is not in place, as a fixed term tenancy would not allow for a rent increase partway through the term.

On April 30, 2018, the Landlord served the Tenants with a Two Month Notice in person. The Two Month Notice states that following as the reasons for ending the tenancy:

- The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property

The effective end of tenancy date on the notice was listed as June 30, 2018.

The Landlord stated that the Two Month Notice was served to the Tenants due to their need to have a fulltime caretaker move onto the property. Initially their plan was to have the current manager move in and take over this role, but as that person is no longer employed by the company, they posted a job advertisement for the position. They submitted that they have a couple that is interested in the position, but are not able to confirm the job offer until they have possession of the rental unit back. Providing a place to live on the property is a part of a potential job offer. The Landlord also testified that they need the caretaker to live on the property due to the responsibilities of the job that occur at all times of day, including on weekends.

The Tenants testified that they moved into the rental unit in the Spring of 2017 on a trial basis. They signed a tenancy agreement on January 1, 2018 for a fixed term of one year, set to end on December 31, 2018. They submitted that they signed the tenancy agreement with a representative of the previous Landlord company in good faith, with the understanding that the company had the authority to rent the unit. The Tenants submitted that they are not aware of the details of each company that has been involved with the property.

The Tenants stated they currently pay \$1,040.00 rent per month after the rent increase that took effect on May 1, 2018. They also confirmed that a security deposit of \$500.00 was paid to the Landlord prior to signing the tenancy agreement on January 1, 2018.

The Tenants testified that they received the Two Month Notice on April 30, 2018, however they are disputing the notice due to their fixed term tenancy that does not end until December 31, 2018.

The Tenants testified that they pay rent each month to the Landlord by providing it in person at the office.

Analysis

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

The parties were not in agreement as to whether a fixed term tenancy is in place. The Landlord also provided testimony that the tenancy agreement may be a nullity, meaning that the contract is voided due to a lack of authority from the person who signed it on behalf of the Landlord.

Section 49(b)(iii) states that a Two Month Notice to end tenancy cannot end the tenancy on a date that is prior to the date that a fixed term tenancy ends. As such, I find that the first issue to address is whether a fixed term tenancy is in place. If the tenancy is determined to be a month to month periodic tenancy, then the validity of the reason for the Two Month Notice becomes the issue to address.

While the Landlord provided testimony that the written tenancy agreement is not valid, I look to Section 12(b) of the *Act* which states that a tenancy agreement does not need to be in writing. I also refer to the *Residential Tenancy Policy Guideline 9: Tenancy Agreements and Licenses to Occupy* which states the following: "If there is exclusive possession for a term and rent is paid, there is a presumption that a tenancy has been created."

Based on the above, I find that a tenancy agreement has been established, regardless of who signed the agreement on behalf of the original Landlord. As the current Landlord and the Tenant confirmed that rent is paid monthly to the Landlord and that a security deposit was paid, this is sufficient to establish a current tenancy, whether it is based on an oral or written agreement. Although the Landlord stated that the original agreement was not signed by someone who had authority to sign, as the tenancy transferred to the

current strata company who began accepting rent, a tenancy was established between the Tenants and the current Landlord.

I also find that the terms of the tenancy as agreed upon by the parties are as stated in the written tenancy agreement, such as the amount of the security deposit that was paid and the monthly rent. The terms of the initial tenancy agreement seem to be accepted by the current Landlord due to their acceptance of the monthly rent payments.

I also determine that regardless of the zoning of the property that may or may not allow for fixed term tenancies, a fixed term tenancy was signed and agreed upon by both parties. When the management and/or ownership of the property changed hands, the previously existing tenancy became the responsibility of the corporation that took over. I also find that no evidence regarding the zoning regulations of the property.

I note that the Landlord cannot accept which terms of the tenancy to accept (such as accepting the payment of a security deposit and monthly rent), but choose not to accept others (that it is a fixed term tenancy). I also note that the Landlord did not provide notice to end the tenancy due to the tenancy agreement being invalid, but instead provided notice to end the tenancy under Section 49 of the *Act*.

Based on the above analysis, I find that a fixed term tenancy agreement was signed on January 1, 2018, with the term set to end on December 31, 2018. I also note that pursuant to Section 44(3) of the *Act*, at the end of the term, a fixed term tenancy continues on a month to month basis if a new tenancy agreement is not signed.

In accordance with Section 49(2)(b)(iii) a Two Month Notice cannot end the tenancy prior to the end of the fixed term. As such, and in accordance with the above determination that this is a fixed term tenancy, I find that the Two Month Notice dated April 30, 2018 cannot end the tenancy earlier than December 31, 2018.

However, I accept the Landlord's testimony regarding the reasons for the Two Month Notice. I determine that the reasons for needing the rental unit for a caretaker on the property are valid as the Landlord is not able to confirm employment until they can confirm that the rental unit is available.

Pursuant to Section 53(2), the effective end of tenancy date of the Two Month Notice is corrected to December 31, 2018. In accordance with Section 55 of the *Act*, an Order of Possession will be issued to the Landlord effective at 1:00 pm on December 31, 2018.

Although the Tenants were not successful in cancelling the Two Month Notice, as they were successful in having the end of tenancy date of the notice corrected to the end of their fixed term, I award them the recovery of the filing fee paid for this application. The Tenants may deduct \$100.00 one time from their next monthly rent payment.

While the issue of the rent increase was not before me, I caution the Landlord that notices of rental increase must be provided in accordance with Section 42 of the *Act*, which states that rent can only be increased every 12 months, regardless of whether the tenancy is a fixed term or a periodic tenancy.

Conclusion

I grant an Order of Possession to the Landlord effective **at 1:00 pm on December 31, 2018**. This Order must be served on the Tenants. 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.

Pursuant to Section 72 of the *Act*, the Tenants are awarded the recovery of their filing fee paid for this application. They may **deduct \$100.00 one time from their next monthly rent payment**.

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 6, 2018

Residential Tenancy Branch