



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MASCHINCHI INVESTMENTS LTD./BC0748998
And [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNL, FFT

Introduction

The hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Two Month Notice to End Tenancy for Landlord's Use and to recover the fee for filing the Application.

The Agent for the Tenant stated that on November 09, 2018 the Application for Dispute Resolution, the Notice of Hearing, and 14 pages of evidence were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On November 20, 2018 the Tenant submitted 20 pages of evidence to the Residential Tenancy Branch. The Agent for the Tenant stated that this evidence was served to the Landlord, via registered mail, on November 20, 2018. The Agent for the Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided

Should the Two Month Notice to End Tenancy be set aside?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on April 01, 2017;

- the parties entered into a written tenancy agreement;
- the tenancy was for a fixed term, the fixed term of which ended on March 31, 2018;
- the tenancy agreement declared that the Tenant must move out of the rental unit at the end of the fixed term;
- the Tenant still lives in the rental unit; and
- rent of \$4,000.00 is due by the first day of each month.

The Agent for the Tenant stated that the Tenant entered into a second fixed term tenancy, the fixed term of which runs from April 01, 2018 to March 31, 2019. She stated that the Tenants were given a copy of this tenancy agreement but have since misplaced it.

The Agent for the Tenant stated that the parties did not enter into a second fixed term tenancy and that the tenancy reverted to a month to month tenancy after March 31, 2018.

The Tenant submitted copies of post-dated cheques for rent for the period between October 01, 2018 and October 01, 2019. The Agent for the Tenant stated that these cheques help establish that the parties entered into a second fixed term tenancy agreement.

The Agent for the Landlord stated that on October 2, 2018 a Two Month Notice to End Tenancy for a Landlord's Use of Property was mailed to the Tenant. The Agent for the Tenant stated that this Notice was received on October 26, 2018. The parties agree that this Notice declared that the Tenant must vacate the rental unit by December 31, 2018 and that the reason for ending the tenancy cited on the Notice is that the rental unit will be occupied by the landlord or the landlord's spouse, or a close family member of the landlord or the landlord's spouse.

The Agent for the Landlord stated that the Landlords' daughter is currently living out of the country; she is returning to the country sometime later this month; and she intends to live in the rental unit. The Agent for the Tenant stated that the Tenant has not been provided with any evidence that the daughter is actually moving back to the country.

The Agent for the Landlord stated that the Landlord is fully aware of the penalties that will occur if her daughter does not move into the rental unit. He stated that there have been no problems with this tenancy and that the Landlord does not have any reason to end the tenancy, other than her daughter wishes to move into the unit. The Agent for the Tenant agreed that there have been no problems with this tenancy.

The Agent for the Tenant submits that the Landlord wishes to end the tenancy because one of the principals of the company that rents the unit was arrested in the summer of 2018 and is currently in custody in the United States.

The Agent for the Landlord stated that the Landlord is aware that one of the principals of the company was arrested. He stated that this is not the reason for ending the tenancy and that the Notice would have been served closer to the time of the arrest if that was the underlying purpose of serving the Notice.

Analysis

There is a general legal principle that places the burden of proving a fact on the person who is asserting the fact. In these circumstances the burden of proving that the Landlord and the Tenant entered into a second fixed term tenancy, the fixed term of which runs from April 01, 2018 to March 31, 2019, rests with the Tenant.

I find that the Tenant has submitted insufficient evidence to establish that the parties entered into a second fixed term tenancy, the fixed term of which runs from April 01, 2018 to March 31, 2019. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a copy of the tenancy agreement, that corroborates the Agent for the Tenant's testimony that the parties entered into this second fixed term agreement or that refutes the Agent for the Landlord's testimony that this did not occur.

I find that the post-dated cheques for rent for the period between October 01, 2018 and October 01, 2019 do not establish that a second fixed term tenancy agreement was reached, as it is very common for tenants provide a landlord with a series of posted cheques, which are simply returned if the tenancy ends.

As there is insufficient evidence to establish that the parties entered into a second fixed term tenancy, the fixed term of which runs from April 01, 2018 to March 31, 2019, I find that this tenancy continued on a month-to-month basis after March 31, 2018, pursuant to section 44(3) of the *Residential Tenancy Act (Act)*.

Section 49(4) of the *Act* stipulates, in part, that a landlord may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. On the basis of the testimony of the Agent for the Landlord and in the absence of any evidence to the contrary, I find that the Landlord's daughter intends to move into the rental unit.

On the basis of the undisputed evidence that there have been no problems with this tenancy, I cannot conclude that the Landlord has any reason to end the tenancy, other than her daughter wishes to move into the unit. I therefore cannot conclude that the Landlord has any ulterior motive for ending the tenancy or that this Notice to End Tenancy was served in bad faith.

I find that the Tenant has submitted no evidence to corroborate the submission that Landlord wishes to end the tenancy because one of the principals of the company that rents the unit was arrested in the summer of 2018 and is currently in custody in the United States. I find that if this arrest was the reason for ending the tenancy it is likely that the Notice would have been served closer to the time of the arrest. I therefore cannot conclude that the Landlord has any ulterior motive for ending the tenancy or that this Notice to End Tenancy was served in bad faith.

As there is insufficient evidence to establish that the Landlord's daughter does not intend to move into the rental unit and the Notice to End Tenancy was served in bad faith, I must dismiss the Tenants' application to set aside the Two Month Notice to End Tenancy for Landlord's Use.

As the application to set aside the Notice to End Tenancy has been dismissed, I grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

As the Tenant has failed to establish the merit of this Application for Dispute Resolution, I dismiss the application to recover the fee for filing the Application.

Conclusion

I grant the Landlord an Order of Possession that is effective at **1:00 p.m. on December 31, 2018**. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

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: December 18, 2018

Residential Tenancy Branch