



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Tenant: OLC, OPT, FFT
For the Landlord: OLM, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the Parties pursuant to the *Residential Tenancy Act* (“Act”).

The Tenant applied for an order cancelling a Mutual Agreement to End a Tenancy signed by the Parties and dated October 22, 2018 (the “Mutual Agreement”). The Tenant also applied for an order for the Landlord to comply with the Act, regulation and/or tenancy agreement, and to recover the filing fee for the Application.

The Landlord applied for an order of possession based on the Mutual Agreement, and to recover the filing fee for his application.

The Tenant and her agent, J.P., and an agent for the Landlord, W.N. (the “Agent”), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing I gave the Tenant and the Landlord the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had had time to review it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses in the hearing and confirmed their understanding that the decision would be emailed to both Parties.

At the onset of the hearing, I advised the Parties that pursuant to RTB Rule of Procedure 2.3, I would be severing claims that were unrelated to the higher priority matters; specifically, the focus was on whether the tenancy ends or not, pursuant to the Mutual Agreement. Accordingly, I dismiss the Tenant's application for an Order for the Landlord to Comply with the Act, regulation and/or tenancy agreement, with leave to reapply.

During the hearing, the Landlord presented testimony about a neighbour's anonymous complaint about the rental property that he said was new evidence. He said he tried to upload it to the RTB portal, but he was told that it was too late to present new evidence in this hearing. The Tenant said that the Landlord's comments in this regard were the first she had heard of the complaint. I find it would be prejudicial to the Tenant and administratively unfair for me to consider this hearsay evidence. Accordingly, I have not given it any weight in my considerations.

Near the end of the teleconference, the Tenant disconnected from the hearing and did not call back in; however, it was the end of the hearing and the Landlord did not say anything that the Tenant should have heard or to which she could have responded. I closed the hearing shortly after the Tenant disconnected.

Issue(s) to be Decided

- Should the Mutual Agreement be cancelled or is it valid?
- Is the Tenant or the Landlord entitled to an order of possession?
- Is either Party entitled to recovery of the filing fee?

Background and Evidence

The Parties agreed that the tenancy started on November 1, 2017, for a fixed term ending on October 31, 2018. The Parties agreed that at the end of October 2018, they signed the Mutual Agreement to end the tenancy on April 30, 2019. I find that the

Mutual Agreement is dated, contains the names of the Parties, the rental unit address, the effective vacancy date of the rental unit, the signatures of both Parties, and is in the approved form – form #RTB-8.

The Tenant acknowledged that she signed the Mutual Agreement, but she said she did not know what she was signing and she did not intend to agree to end the tenancy. The Tenant said she thought if she complied with the Landlord's requirements, such as not storing materials in the garage and not allowing her son to store uninsured vehicles on the property that the tenancy would continue. The Tenant said she complied with the Landlord's terms, but the Landlord still wants to end the tenancy.

The Agent said that the property was a mess, that the Tenant would clean things up, but then it would be messy again. The Agent said that the Parties signed an agreement, which is a legal document. He said that it is just signing like a tenancy agreement - that a person should respect the importance of what they sign.

The Tenant said that she is just trying to keep her home. She said she has always paid her rent and has always done everything on time. She said the Landlord has told her that she keeps the house very nice. The Tenant said that the neighbourhood is cleaning up and that the rents are skyrocketing in the area. She said this is the reason the Landlord wants her out of the rental property, because her rent is lower than it could be in this neighbourhood now. The Tenant said that she believed if she cleaned up the property as directed by the Landlord that she could renew her lease. She said she did not realize what she was doing by signing the Mutual Agreement.

The Agent said that cleaning up is part of her responsibility as a tenant, so she was required to do this whether the tenancy was continuing or not.

The Agent submitted a letter he had sent to the Tenant dated February 25, 2019, in which he reminds the Tenant of the Mutual Agreement, and proposes to meet for a condition inspection for May 1, 2019. This letter indicates that a copy of the Mutual Agreement was attached.

Analysis

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

Section 44(1)(c) of the Act states:

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

...

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

I find that the Tenant signed the Mutual Agreement. Her evidence about spending time and money cleaning up the rental unit are, as the Landlord said in the hearing, part of her responsibility as a Tenant. I find this is consistent with Policy Guideline #1, “Landlord and Tenant – Responsibility for Residential Premises” (“PG #1”). For instance, PG #1 states:

1. This guideline is intended to clarify the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property and manufactured home parks, and obligations with respect to services and facilities.

The landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet ‘health, safety and housing standards’ established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain ‘reasonable health, cleanliness and sanitary standards’ throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).

[emphasis added]

Although it is not required to be consistent with section 52 of the Act, since it is not a “notice” to end tenancy, I find that the Mutual Agreement *is* consistent with section 52, in terms of being in the right form and content, which I find increases its credibility and reliability. Both Parties signed the Mutual Agreement, and the Tenant is responsible for what she signs. I therefore, dismiss the Tenant’s application for an order of possession of the rental unit. I grant the Landlord an order of possession for the rental unit as of April 30, 2019 at 1:00 p.m., based on the Mutual Agreement.

I also find that the Landlord is entitled to recover the \$100.00 cost of the filing fee, which he may deduct from the Tenant's security deposit.

Conclusion

The Tenant's application is dismissed without leave to reapply. I grant the Landlord an order of possession effective on **April 30, 2019 at 1 p.m.** This order must be served on the Tenant and may be enforced in the Supreme Court of British Columbia.

The decision will be emailed to both Parties, as indicated above. The order of possession will be emailed to the Landlord for service on the Tenant.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: April 17, 2019

Residential Tenancy Branch