



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANADIAN NATIONAL RELOCATION LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT OPT OLC

Introduction

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

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72; and
- an Order of Possession of the rental unit pursuant to section 54.

The tenant was represented by counsel, NM, as well as an agent, TK, in this hearing. DL appeared as agent for the landlord in this hearing. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution ('applications'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed, I find that these documents were duly served in accordance with section 88 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to an Order of Possession?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenant is applying for an Order of Possession as they feel that they had entered into a tenancy that is to begin on July 1, 2019. The named tenant in this dispute is a company that rents properties, and in turn sublets the properties to their tenants. Counsel submitted that the tenant CNR had signed a written tenancy agreement for a fixed term tenancy that is to begin on July 1, 2019, but the landlord had decided to cancel this tenancy without proper notice or permission to do so.

Both parties submitted a copy of a written tenancy agreement, which appear identical in nature. The tenancy agreement names both parties, and a fixed-term tenancy from July 1, 2019 to June 30, 2021, with monthly rent set at \$7,800.00, payable on the first of the month. The tenancy agreements are signed, and dated May 14, 2019 below the tenant's signature. The landlord submits that this tenancy agreement was only a draft, and was still subject to review and final approval. The landlord submitted text messages in their evidentiary materials, and feels that this supports the fact that they had never finalized the tenancy. The landlord acknowledges that a security deposit cheque for \$3,900.00 was received from the tenant, but was sent back to the tenant because the tenancy was not approved. The landlord feels that this tenancy agreement is not valid, and was never finalized, citing the incompleteness of the document. The landlord testified that the document fails to meet the requirements of the *Act* as the landlord did not date his signature, and the legal first and last names of the tenant are not given. The landlord testified in this hearing that although they had initially discussed the rental of home to the tenant, they had decided that the tenant was not suitable after being unable to confirm the identity of a party who goes by DW. The landlord testified that they had requested the identification of DW, and started having doubts about the honesty of the tenant after they had received disclosure about how the tenant is a "scammer". The landlord provided an unsigned addendum, which names the parties whom would be residing at the rental unit. The landlord testified that these parties confirmed that they had never hired this company, and that they were being misrepresented. The landlord provided an email from these parties stating that they had answered an online ad, which was fraudulent. The landlord was wary that the tenants were not whom they said they were, and decided to not complete the tenancy agreement. The landlord feels that no notices or orders are required to end the tenancy, as it had never began, nor was it finalized.

Counsel for the tenant submits that both parties had entered into a written tenancy agreement that is now binding, and the landlord has refused to fulfill their obligations under the tenancy agreement. Counsel submitted that preparations have already been made for their client to move in. Counsel for the tenant provided the following background for why the landlord had backed out of the binding agreement. Counsel submitted that two parties had applied to rent this property, and the unsuccessful applicant is trying to discredit the tenant by making false and unfounded allegations to the landlord about the tenant. The tenant is requesting an Order of Possession so they may begin the tenancy on July 1, 2019 as stated on the tenancy agreement. The landlord confirmed in the hearing that the unit has not been re-rented to new tenants.

Analysis

The definition of a “tenancy agreement” is outlined in the following terms in section 1 of the *Act*:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Section 16 of the *Act* states the following about when a tenancy agreement takes effect.

Start of rights and obligations under tenancy agreement

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

A tenancy can exist in the absence of a written tenancy agreement. In this case, a written tenancy agreement exists, but the landlord disputes that it was ever finalized, and therefore the agreement is not binding. The landlord testified in the hearing that the landlord had changed their minds about the tenant's suitability, and returned the security deposit under the belief that this tenancy did not exist yet as no agreement was ever finalized.

Section 13(2) of the *Act* outlines the requirements for a tenancy agreement:

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

- (a) the standard terms;*
- (b) the correct legal names of the landlord and tenant;*
- (c) the address of the rental unit;*
- (d) the date the tenancy agreement is entered into;*
- (e) the address for service and telephone number of the landlord or the landlord's agent;*
- (f) the agreed terms in respect of the following:*
 - (i) the date on which the tenancy starts;*
 - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;*
 - (iii) if the tenancy is a fixed term tenancy, the date on which the term ends;*
 - (iii.1) if the tenancy is a fixed term tenancy in circumstances prescribed under section 97 (2) (a.1), that the tenant must vacate the rental unit at the end of the term;*
 - (iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;*
 - (v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;*
 - (vi) which services and facilities are included in the rent;*

(vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

In light of the evidence before me, I find that the both parties had entered into a tenancy agreement on May 14, 2019 for a tenancy to begin on July 1, 2019. Section 13 of the *Act* sets out that the tenancy agreement must set out the correct legal names of both parties. I am satisfied that the tenancy agreement meets this requirement. The landlord further submitted that the document is not dated by the landlord. Section 13 of the *Act* requires that the tenancy agreement sets out the date the agreement is entered into. The document clearly indicates that a deposit of \$3,900.00 must be received by May 14, 2019, which was fulfilled by the tenant. The tenant signed the agreement, and dated the document May 14, 2019. Even in the absence or omission of the date of the landlord's signature, the document is clearly signed by both parties, and the provision of the security deposit as required by the tenancy agreement further supports that this agreement was entered into on May 14, 2019. I have reviewed the text messages submitted by both parties, and I do not find that these text messages are sufficient to support that the tenancy agreement was merely a draft. I find that the written tenancy agreement meets all the requirements of section 13 of the *Act*. I find that both parties had agreed to enter into a tenancy agreement that is to begin on July 1, 2019. Both parties, as stated in Section 16 of the *Act*, are therefore bound by the rights and obligations required by this tenancy agreement and *Act*.

Section 44 of the *Act* states how a tenancy may be ended:

How a tenancy ends

- 44** (1) A tenancy ends only if one or more of the following applies:
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 *[tenant's notice]*;
 - (i.1) section 45.1 *[tenant's notice: family violence or long-term care]*;
 - (ii) section 46 *[landlord's notice: non-payment of rent]*;
 - (iii) section 47 *[landlord's notice: cause]*;
 - (iv) section 48 *[landlord's notice: end of employment]*;

(v) section 49 [*landlord's notice: landlord's use of property*];

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

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

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Neither party had signed any Mutual Agreements to end tenancy, nor did the landlord issue any Notices to End Tenancy to the tenant. The landlord did not have an Order of Possession, nor do I find that that the tenant has abandoned this tenancy. Based on these facts, I find that the tenant is entitled to an Order of Possession effective July 1, 2019. I order that the landlord comply with the *Act* and tenancy agreement by giving possession to the tenant as set out in the written tenancy agreement. This tenancy is to begin on July 1, 2019, and will continue until ended in accordance with the *Act* and tenancy agreement.

I allow the tenant's application to recover the \$100.00 filing fee from the landlord. The tenant may choose to give effect to this monetary award by reducing a future monthly rent payment by \$100.00.

Conclusion

I find that a tenancy between both parties exist, and order that the landlord fulfill their obligations under the agreement, and the *Act*. This tenancy is to begin on January 1, 2019, and will continue until ended in accordance with the *Act* and tenancy agreement. I grant an Order of Possession to the tenant effective July 1, 2019. Should the landlord fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia

I allow the tenant recover the filing fee for this application. I allow the tenant to implement this monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: June 4, 2019

Residential Tenancy Branch