



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OLC, FFT

Introduction

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

- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant, the director of the landlord housing society (the "director") and the landlord's counsel attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that she served the landlord with her application for dispute resolution via registered mail on November 10, 2019. The director testified that the tenant's application for dispute resolution was received on November 18, 2019. I find that the tenant's application for dispute resolution was served on the landlord in accordance with section 89 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 1, 2016 and is currently ongoing. Monthly rent in the amount of \$615.00 is payable on the first day of each month. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The landlord is a non-profit society that provides subsidized housing to low income seniors.

The tenant testified that clause 17 of the tenancy agreement does not comply with the *Act* and is an unconscionable clause and should be struck from the tenancy agreement. Clause 17 of the tenancy agreement states:

17. Extended absences from Residential Premises

If the tenant is eligible for a rent subsidy and if the tenant is absent from the residential premises for one consecutive month or longer without the prior written consent of the landlord, the landlord may end the tenancy, even if the rent is paid for the period.

The tenant testified that when she signed the tenancy agreement, she was not in a position to dispute the clause because she had just left an abusive relationship, was financially insecure and in distress.

Both parties agree that the tenant requested permission for a three month absence from the subject rental property which was initially denied and later granted.

The tenant's written submissions sought a variety of remedies. During the hearing I asked the tenant what remedies she was seeking in this hearing. The tenant testified that she was only pursuing a determination on the validity of clause 17 of the tenancy agreement.

Counsel for the landlord submitted the following:

- there is nothing in the *Act* or the tenancy agreement which entitles the tenant to be absent from the rental unit for more than one consecutive month, absent written consent of the landlord.
- There is nothing in the *Act* or the tenancy agreement which prohibits the landlord from imposing reasonable restrictions on the length or frequency of tenant absences.
- The tenant has been granted her request for an extended absence from the rental unit and as such the subject of this dispute is now moot.
- Clause 17 permits the landlord to maintain maximum occupancy of its subsidized rental units in keeping with its mandate of providing permanent housing for low income seniors. Extended and routine absences are inconsistent with the permanent residency requirements of the BC Housing subsidized housing program.

- Clause 17 is not an absolute bar on extended absences as it includes the possibility of landlord consent.
- There is no basis for the tenant's claim that clause 17 is unconscionable because it does not permit absences longer than one month and the landlord did not put undue pressure on the tenant to sign the tenancy agreement.

Analysis

Section 28(c) of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*].

Section 5 of the *Act* states that landlords and tenants may not avoid or contract out of this *Act* or the regulations. Any attempt to avoid or contract out of this *Act* or the regulations is of no effect.

I find that clause 17 of the tenancy agreement seeks to limit the tenant's right to quiet enjoyment under section 28(c) of the *Act* by limiting her right to exclusive possession of the subject rental property. I find that in limiting the tenant's ability to travel or leave the subject rental property, for any length of time, the landlord is attempting to contract out of the tenant's right to quiet enjoyment under section 28(c) of the *Act*. I therefore find, pursuant to section 5 of the *Act*, that clause 17 of the tenancy agreement has no force or effect and is void. The landlord is not entitled to restrict the length of the tenant's absences.

I note that counsel for the landlord's submissions on the policy reasons behind the implementation of clause 17 and the purpose of clause 17 are not relevant. The *Act* applies to all landlords and tenants equally, the landlord does not receive special consideration for its aims as a non-profit housing society.

I dismiss counsel's argument that since the tenant has received the extended leave she requested from the landlord, that this application is moot. The tenant has taken issue with clause 17 and its compliance with the *Act*, this dispute stands on its own and does not need to be connected to a claim that the tenant was not permitted an extended leave.

As I have determined that clause 17 of the tenancy agreement does not comply with section 28(c) of the *Act*, I decline to consider if clause 17 of the tenancy agreement is an unconscionable term.

I Order the landlord to comply with section 28(c) of the *Act*.

As the tenant was successful in her application, I find that the tenant is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlord.

Conclusion

I Order the landlord to comply with section 28(c) of the *Act*.

Clause 17 of the tenancy agreement is void and has no force or effect.

The tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlord.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Clause 9.1(1) of the *Residential Tenancy Act*.

Dated: January 06, 2020

Residential Tenancy Branch