



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Village on the Lake Developments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL-4MO, OLC

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An order cancelling a notice to end tenancy - Section 49; and
2. An Order that the Landlord comply with the tenancy agreement and Act - Section 62.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord confirms that its email address as set out in the Tenant’s application is correct.

Issue(s) to be Decided

Has the Landlord ended the tenancy as allowed under the Act?

Background and Evidence

The following are agreed or undisputed facts: The tenancy started in June 2011. On December 3, 2019 the Parties entered into a written tenancy agreement starting December 1, 2019 to end November 30, 2020. The tenancy agreement requires the Tenant to move out of the unit at the end of the fixed term however no reasons for the required move-out is set out on the tenancy agreement. The tenancy agreement used by the Parties provides a space required to be filled out that indicates the reason for the requirement to vacate at the end of the tenancy. Rent of \$1,083.20 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$500.00 as

a security deposit. In October 2020 the Landlord gave the Tenant an undated letter setting out that the Tenant will need to have all its belongings moved out of the unit by November 30, 2020. The letter does not include any reasons for the Tenant to move out of the unit.

The Landlord states that although it is not indicated on the tenancy agreement the Tenant was informed at the time of signing the agreement that the Landlord's father would be moving into the unit. The Landlord states that due to increased financial costs, most particularly the increased strata fee, the Landlord can no longer afford to rent the unit at its current rental price. The Landlord states that these financial concerns were present at the time of the Parties signing the fixed term tenancy agreement. The Landlord submits a document setting out its costs and I note that the cost for the strata fee was increased by 25% in September 2020.

The Tenants state that the Landlord never informed the Tenant at the time of signing the tenancy agreement that they had to move out at the fixed term for any reason including because the Landlord's father would be moving into the unit.

Analysis

Section 13(2) of the Act provides that a tenancy agreement must comply with any requirements prescribed in the regulations and must set out the following:

- 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.

As there are no circumstances set out in the tenancy agreement for the requirement to vacate the unit at the end of the fixed term, I find that the tenancy agreement does not comply with the Act. Further given the Tenant's evidence that, at the time of signing the agreement, it was not informed of the reason for the requirement to move out of the unit at the end of the fixed term, and as the Landlord has no evidence to support that the Tenant was given this reason, I find on a balance of probabilities that there was no

intention at the time of signing the agreement for the Landlord or any of its close family members to occupy the unit at the end of the term.

Section 6(3) of the Act provides that a term of a tenancy agreement is not enforceable if

- (a) the term is inconsistent with this Act or the regulations,
- (b) the term is unconscionable, or
- (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

As the tenancy agreement does not comply with the act or is inconsistent with the intent and meaning of the Act in relation to the requirement to move out at the end of a fixed term, I find that the requirement to move out of the unit is not enforceable.

Section 52 of the Act provides that in order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

As there is no evidence that the Landlord ended the tenancy for any other reasons with the use of an approved form, I further find that the tenancy has not ended as a result of any notice to end tenancy issued by the Landlord to the Tenant.

Section 62(3) of the Act provides that the director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies. Given the above finding that the tenancy agreement does not comply with the Act I order that the tenancy continues on a periodic basis or until and as otherwise agreed by the Parties.

Conclusion

The requirement to move out of the unit at the end of the fixed term is not enforceable and the tenancy continues.

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

Dated: December 03, 2020

Residential Tenancy Branch