Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes "Original" Landlord: OPM; MNRL-S, FFL
"New" Landlord: OPL, MNRL, MNDCL, FFL
Tenant: CNL, OLC, LRE, MNDCT

Introduction

This hearing dealt with three Applications for Dispute Resolution. The hearing was scheduled in response to the "original" landlords' Application for Dispute Resolution seeking an order of possession and a monetary order (file number ending in 908 is noted on the coversheet of this decision). After the hearing was scheduled, the tenancy was purportedly transferred to "new" landlords.

The "new" landlords issued a notice to end tenancy for which the tenant submitted an Application for Dispute Resolution seeking to cancel the notice to end tenancy; an order restricting the landlords' access to the rental unit; and a monetary order (file number ending in 161 is noted on the coversheet of this decision). The "new" landlords then submitted their own Application seeking an order of possession and a monetary order.

The original hearing was conducted via teleconference and was attended by the "new" landlords, their legal counsel, the "original" landlords, the tenant, her advocate and the tenant's support person. The original hearing had been scheduled only for one hour, but this was insufficient time to complete the full hearing. As such, I adjourned the hearing and it reconvened on January 14, 2022. The same participants attended the January 14, 2022 hearing.

The Residential Tenancy Branch scheduled all three applications to be heard in one hearing to be conducted on January 11, 2021. At the hearing, the "new" landlords confirmed that they had not served the tenant with their Application for Dispute Resolution. The tenant and her advocate confirmed they had not received the "new" landlords' Application or evidence.

Section 59(3) of the *Residential Tenancy Act (Act)* requires a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it. As the "new" landlords have failed to serve the tenant at all with their Application, I find the "new" landlords have failed to comply with the

requirements set forth under Section 59(3). Therefore, I find I cannot proceed to hear the "new" landlords' Application.

Based on the above, I dismiss the "new" landlords' Application for Dispute Resolution, in its entirety, with leave to reapply.

In regard to the service of hearing documents and evidence between the "original" landlords and the tenant, both parties acknowledged receipt of their respective Applications and notice of hearing documents. The "original" landlord acknowledged receipt of the tenant's evidence.

The "original" landlord also acknowledged that they had not served a copy of the mutual agreement to end tenancy, that they had uploaded to the Residential Tenancy Branch system, to the tenant. However, I note that the tenant submitted and served a copy of that document as part of her evidence. As such, I will consider that document, regardless of the failure of the landlord to serve it, as I find no prejudice to the tenant.

The "original" landlord served another package of evidence to the tenant regarding a previous dispute application that had been withdrawn by the tenant. The tenant acknowledged receipt of this evidence.

In the tenant's Application, she has named a corporate entity that she states is the "original" landlords' company. However, I note that in the tenancy agreement submitted into evidence by the tenant this corporate name is not listed as a landlord. As such, I amend the tenant's Application to exclude the corporate name.

In addition, I also note the tenant (MN) has named another tenant (RS) in her Application. However, while the tenancy agreement names RS as a tenant the only tenant signature on the tenancy agreement is the tenant MN. As such, I find that RS is not a party to this tenancy, and I amend the tenant's Application to exclude the name of RS.

Towards the end of the hearing the parties acknowledged that the most important aspect of all applications was to determine if the tenancy should continue. As such, both the tenant and the "original" landlords withdrew the portions of their respective Applications, seeking monetary orders. The parties, both agreed that they wished to pursue reaching a settlement outside of the dispute resolution process on the monetary claims. I accept these withdrawals and amend the original landlords' and the tenant's respective applications to exclude their monetary claims.

I note that because the tenant's Application for Dispute Resolution is seeking to cancel a notice to end tenancy issued by the "new" landlord, Section 55 of the *Act* requires I issue an order of possession to the landlord if the landlords' notice complies with Section 52 of the *Act* and I either dismiss the tenant's application or uphold the landlords' notice to end tenancy.

I also advised the parties that if I were to determine the tenancy should end, I also had to determine who is, in fact, now the landlord. As such, both parties provided testimony, at the start of the hearing in regard to the transfer of ownership of the property between the "original" and "new" landlords.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession based on a mutual agreement (between the tenant and the "original" landlords); and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 44, 55, 67, and 72 of the *Act.*

It must also be decided if the tenant is entitled to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (issued by the "new" landlords); and for an order restricting the "new" landlord's access to the rental unit, pursuant to Sections 49, 67, and 72 of the *Act.*

Should the tenants fail to succeed in cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (issued by the "new" landlords), it must be determined if the landlord is entitled to an order of possession, pursuant to Sections 52 and 55 of the *Act*.

It must also be determined if the agreement between the "original" and "new" landlords constitutes a transfer of ownership sufficient to transfer the obligations of the "original" landlords to the "new" landlords for the purposes of the *Act* and to determine who may be entitled to an order of possession based on the mutual agreement to end tenancy and/or the Two Month Notice to End Tenancy for Landlord's Use of Property.

Background and Evidence

The tenant submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on March 1, 2015 for a month-to-month tenancy beginning on March 1, 2015 for a monthly rent of $1,000.00 due on the 1st of each month with a security deposit of $500.00 paid;
- A copy of a mutual agreement to end the tenancy, signed by the tenant and both original landlords, dated April 4, 2021 that read:

  "We, MF and TF, agree to free rent for the months of June and July 2021 if MAN vacates the premise at XXX in XXXX on August 7th 2021. The place must be left in good condition. Signing this agreement ends any and all disputes and with file XXXXXXXXX against MF and TF."; and
- A copy of a "Contract of Purchase and Sale" between the "original" landlords and the "new" landlords for the property. The contract stipulates the buyer was to have vacant possession of the property at 12 noon on the completion and

possession date of August 7, 2021. The contract provided a purchase price of $400,000.00 payable in the amount of $1.00 on execution of the contract and monthly payments of $1,500.00 due on the 1st day of each month beginning on the completion date.

During the hearing the tenant submitted the "new" landlords did, in fact, not purchase the property and that the arrangement between the "original" and "new" landlords is a rent to own scheme that would deem the "new" landlords as merely tenants with no authourity over the property to act as landlords.

The tenant submitted that the "new" landlords do not fit the definition of landlord under Section 1 of the *Act*. Specifically, the tenant submitted the because the contract between the two landlords is a rent to own situation the "new" landlords are not the owner of the rental unit as is required under (a) of the landlord definition.

The tenant also asserts that, because, according to the "Contract of Purchase and Sale", dated April 18, 2021, the "original" landlords are responsible for the payment of municipal property taxes and utilities they remain the owners of the residential property and are therefore still the landlords.

The tenant also relies on an undated text message between the tenant's son's friend and a person who is identified as a realtor. In her written affidavit the tenant submitted that this text message exchange occurred in July 2021. In the exchange the realtor is asked "Is it sold or have offer?" The response was that the realtor understood it was being pulled off the market and keeping it as a rental.

I note that there is no indication in the text message as to what property is being discussed. The landlords' legal counsel also confirmed that the realtor was not the realtor handling the sale of the property for either landlord and as a result has no direct knowledge of what has transpired on the property.

The landlords' counsel submitted that the Contract for Purchase and Sale is a binding agreement that restricts the "original" landlord from doing anything else with the property, such as selling it to another party and as such submits the "new" landlords have in effect purchased the property and all payments being made to the landlord will consist of payments made toward the purchase price of the property with no portion being made as "rent".

In regard to the mutual agreement to end tenancy the tenant submits that she was "tricked" into signing it by the "original" landlords' actions. First, the tenant submitted, the landlord had attempted to force her into accepting another illegal rent increase in January 2021 but when she wouldn't agree to that the landlord said they would end the tenancy so that they could renovate it and get it ready for sale.

Second, the landlord issued to the tenant a Four Month Notice to End Tenancy for Demolition, Renovation, Repair, or Conversion of a Rental Unit with an effective vacancy date of June 7, 2021 that was incomplete. The Notice did not contain the tenant's full name; nor was it signed or dated. The tenant submitted an Application for Dispute Resolution in March 2021 and a hearing was set for Monday, July 5, 2021 (file number is listed on the coversheet of this decision).

The tenant submitted that in early April 2021 the landlord approached her and told her that they had sold the property and wanted the tenant to sign the mutual agreement to end tenancy letter dated April 4, 2021 agreeing to withdraw her dispute noted above and all disputes with the landlord if they gave her rent free for the months of June and July 2021 and she vacated the rental unit as of August 7, 2021.

The tenant submitted that the "original" landlords told her, prior to signing this agreement, that the property had sold, and she would be required to move out of the property when the "new" owners took possession. The tenant also submitted she felt tricked into signing the agreement because she signed it before the date of the Contract for Purchase and Sale, and she feared what would happen to her tenancy.

The tenant testified she later determined that from January 1, 2019 the landlord had imposed an illegal rent increase of $100.00 per month and that she had overpaid rent in the amount of $2,900.00. The tenant submitted, into evidence, a copy of a letter she wrote to the "original" landlords on July 15, 2021.

In this letter the tenant explains why she believes the rent increase did not comply with the requirements set forth in the *Act*. She also states, in the letter, that the *Act* allows for her to deduct this overpayment of rent from future rent payments. She explains that as a result:

> "Your seemingly generous offer of allowing me to live rent-free for June and July if I agreed to vacate the house by August 7th (as detailed in your letter dated April 4th, 2021) was anything but generous. I am within my legal rights to put my $2900 overpayment over the past 2 ½ years toward June, July and most of August rent. Having used up $2000 of my rent credit in June and July, I will be paying $100 in rent for August and then I will resume my $1000 rent payments in September."

While the tenant is clear, in her letter, that she does not consider the free rent for June and July to be anything more than a repayment to her for an overpayment of rent, rather than a benefit for agreeing to end the tenancy, she does not specifically say that she intends to renege on her agreement to vacate the rental unit and continue the tenancy. I note the tenant's implication by stating she will "resume my $1000 rent payment in September".

The tenant's advocate submitted that the landlord should have issued the tenant a Two Month Notice to End Tenancy for Landlord's Use, if they had indeed sold the property, instead of attempting to end the tenancy by way of mutual agreement. As such, the advocate's position was that the tenant was allowed to treat the landlord's mutual agreement as a Two Month Notice and as it was not provided in the form required by the *Act* it is invalid.

The landlord submits that the tenant cannot, after receiving the benefit of the two month's free rent, say that she no longer considers it to be part of that agreement and then nullify the mutual agreement to end the tenancy.

Landlords' counsel also referred to their evidence of the tenant's evidence that they received in regard to the July 5, 2021 hearing. In this evidence the tenant had made handwritten notes, dated March 18, 2021, which included the following statements:

- "He illegally increased the rent once than tried again"
- "In January 2019 increased rent from 1000.00 to 1100.00 without written 3 month notice just pay extra 100.00 starting in January 2019…."

The landlords' position on this evidence is that the tenant was aware of the potential rent overpayment at least on March 18, 2021 which pre-dates her signing of the mutual agreement to end tenancy. As such, the landlord submitted, she cannot say that she just discovered the overpayment when she wrote the July 15, 2021 letter.

Analysis

Residential Tenancy Policy Guideline 27 speaks to the issue of transferring ownership of a property and states:

> A tenancy agreement transfers a landlord's possessory rights to a tenant. It does not transfer an ownership interest. If a dispute is over the transfer of ownership, the director does not have jurisdiction. In deciding whether an agreement transfers an ownership interest, an arbitrator may consider whether:
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> • money exchanged was rent or was applied to a purchase price;
> • the agreement transferred an interest higher than the right to possession;
> • there was a right to purchase in a tenancy agreement and whether it was exercised.

Based on the documented evidence of the Contract for Purchase and Sale and the submissions of the landlord's legal counsel, I am satisfied that the contract between the "original" and "new" landlords confirms a transfer of an ownership interest.

I make this finding, at least in part, as the monthly payment amounts are applied to a purchase price and on account of municipal property taxes and utilities as opposed to a rent payment.

I also find that the Contract allows for the transfer of ownership after the balance of the deferred portion of the payment is paid with that balance due 2 years from the completion date of the sale. As such, I find the agreement has transferred an interest higher than the right to possession. While this right has not yet been exercised there is no evidence before me that it will not be exercised upon the future date outlined in the contract.

Therefore, for the purposes of the *Act*, I find the "new" landlords became the landlords in this tenancy on August 7, 2021 and are entitled to any orders arising from this hearing.

Section 44(1)(c) of the *Act* allows a tenancy to end if the landlord and tenant agree in writing to end the tenancy. I note that in order to end a tenancy by mutual agreement there is no requirement under the *Act* for the landlord or the tenant to have any specific reason to end the tenancy.

I am not persuaded by the tenant's position that because there was the potential of a sale of the property that the landlord was required to end the tenancy in accordance with Section 49 of the *Act*. Section 44 allows a landlord and tenant to end a tenancy by mutual agreement under any circumstances.

I note that if the landlord had issued a Two Month Notice to End Tenancy for Landlord's Use of Property because they had received a request from a purchaser to end the tenancy for the purchaser to move in, the tenant would have been entitled to a two month notice and one month's free rent as compensation.

By ending the tenancy by mutual agreement, the parties were able to negotiate terms of ending the tenancy and in this case by agreeing on April 4, 2021 to end the tenancy on August 7, 2021 the tenant enjoyed over four months notice and two months rent in compensation. As such, in ending the tenancy by mutual agreement I find the tenant obtained substantial benefit that she would not have obtained had the landlord issued a Two Month Notice.

I am not persuaded by the tenant's position that she "was tricked" by the "original" landlords or under any specific duress in agreeing to end the tenancy. I concur with the landlord's position that the tenant was aware, at the time she signed the mutual agreement, that she may have had a non-compliant rent increase and, in fact, that she was seeking the return of the resulting overpayment.

As such, since the tenant was aware of the potential overpayment and that the landlord had already discussed with her the potential to end the tenancy to do renovations with the intend of selling the property as shown in the landlord's evidence of what was submitted in support of the tenant's Application for Dispute Resolution that had been set

to be heard on July 5, 2021, I find it was not necessary to know whether or not the property had sold at the time of signing of the mutual agreement.

I also agree with landlord's counsel, it was not open to the tenant to say in July 2021, after enjoying the benefit of the agreement she made (two free months), that she was unilaterally changing the issue of rent, to be compensation for an overpayment of rent. I make this finding, in part, because on April 4, 2021 the tenant agreed in writing to accept the free rent as part of the mutual agreement to end the tenancy. As such, the tenant was aware that a no time after the agreement was signed was there an expectation that rent would be paid for June and July 2021.

Furthermore, Residential Tenancy Policy Guideline #11 stipulates that a landlord or tenant cannot unilaterally withdraw a notice to end tenancy. While the guideline is designed more specifically to notices to end tenancy issued by one of the parties, I find it is just as applicable in these circumstances, particularly when both parties have agreed to the end of the tenancy. As such, I find it was not open to the tenant to completely disregard the agreement that she had signed to end the tenancy on August 7, 2021.

As a result, I find the tenancy ended on August 7, 2021 and the tenant has been overholding since that date.

As I have found the tenancy ended on August 7, 2021, I find it is unnecessary to consider or make any findings on the tenant's Application for Dispute Resolution as the issues are now moot. As a result, I dismiss the tenant's Application in its entirety without leave to reapply.

Conclusion

Based on the above, I find the "new" landlords are entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the "original" landlords are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **$100.00** comprised of the fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: January 18, 2022