



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FF

Introduction

This hearing convened to hear the landlords' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit pursuant to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice) issued to the tenants; and
- to recover the cost of the filing fee.

The landlords, the tenants, and the tenants' legal counsel attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed prior to the start of the hearing that recording of the dispute resolution hearing is prohibited.

The parties confirmed receiving the other's evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the landlords entitled to an order of possession of the rental unit based upon a their Notice and to recover the cost of the filing fee?

Background and Evidence

The tenancy began in 2010. The landlords were originally represented by a property management company, and they took over running the tenancy themselves in 2019. A written tenancy agreement was signed by the parties on August 7, 2020, which listed a tenancy start date of October 1, 2020, for a fixed-term ending on September 30, 2021. The tenants paid a security deposit of \$425. Filed in evidence was the written tenancy agreement.

As to the Notice, the landlord testified that they served the Notice to the tenants by registered mail, ordinary mail, WhatsApp message, and emails. The Notice was dated May 1, 2021, and listed an effective move-out date of September 30, 2021. The reason listed on the Notice for ending the tenancy was that the rental unit will be occupied by the landlord or the landlord's spouse. Filed in evidence was a copy of the Notice.

The landlord testified that they wanted to move from their home in another province due to the cold weather in their current location, for health reasons.

The tenant confirmed receiving the Notice in July 2021, as they were out of the country at the time it was issued in May, 2021.

The landlord submitted that the tenants wanted to stay longer and offered to pay additional monthly rent.

To date, the tenants have not vacated the rental unit, despite having received many reminders that they were to vacate the rental unit.

In response, the tenants submitted documentary evidence and written submissions.

The tenants, through counsel, submitted that in and around 2020, before requiring the tenants to enter into a new tenancy agreement, the landlords advised the tenants the monthly rent was too low and that the monthly rent needed to be increased.

The landlords provided the tenants with a new tenancy agreement, which increased the monthly rent from \$915 to \$940, signed by the parties.

On September 14, 2021, the parties had a conversation about the situation, and the tenants came away with the impression the landlords wanted to sell the property. When the tenants refused to move, the landlord asked how much more the tenants were willing to pay, according to counsel. The tenants and the landlords entered into negotiations on the monthly rent and in the end, the parties entered into a written tenancy agreement that the tenants would pay the monthly rent of \$1,200, according to counsel.

Included in the tenants' evidence was a document in another language signed by the parties on September 21, 2021. Additionally, there was a translation of that document, on a "TRANSLATOR'S DECLARATION", dated December 7, 2021, from a Certified Translator, Court Interpreter and Medical Interpreter. The declarant said they were in good standing of the Society of Translators and Interpreters of British Columbia with a language combination CHINESE to ENGLISH. A seal was affixed to the DECLARATION along with a business card of credentials.

The translation stated that the tenants "are now required to pay a monthly rent of \$1,000 to rent" the property listed on the document (residential property), starting October 01, 2021. The document stated that the "rental will be month-to-month, e.g., from October 1, 2021, to October 31, 2021, etc."

In response to this evidence, the landlord said that the translation was inaccurate. To support this submission, the landlord said they used a Google translation app to show that the words used were "request to rent the site...".

The landlord submitted a copy of the Google translation.

The landlords denied a new tenancy was formed and they should be granted vacant possession of the residential property, due to their Notice.

At the end of the submissions by the parties, the landlord referred to the document in question as an “agreement”, which she acknowledged signing, but changed her mind the next day.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

The burden of proof is on the party making the claim, on a balance of probabilities.

While typically under these circumstances I would grant the landlords an order of possession of the rental unit due to the undisputed Notice, I am unable to do so as I find the landlords entered into a new tenancy agreement with the tenants, for a start date of October 1, 2021, at a monthly rent of \$1,200, and on a month-to-month basis.

Section 62 (2) of the Act stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.

Section 1 of the Act defines a tenancy agreement as 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.

Residential Tenancy Branch (RTB) Policy Guideline 9 states:

Under a tenancy agreement, the tenant has exclusive possession of the site or rental unit for a term, which may be on a monthly or other periodic basis. Unless there are circumstances that suggest otherwise, there is a presumption that a tenancy has been created if:

- *the tenant gains exclusive possession of the rental unit or site, subject to the landlord’s right to access the site, for a term; and*
- *the tenant pays a fixed amount for rent.*

Some factors that may weigh against finding a tenancy are a security deposit is not required and the occupier pays property taxes and utilities, but not a fixed amount for rent, among others.

In the circumstances before me, I find on a balance of probabilities that the parties negotiated and agreed to continue the tenancy after the fixed-term ended on September 30, 2021, on a month-to-month basis, for an increase of monthly rent of \$940 to \$1,200. The tenants previously paid a security deposit of \$425.

I find this agreement was in writing and signed and dated by both parties.

I find the certified translation from a Certified Translator, Court Interpreter and Medical Interpreter more reliable than an internet translation app, with an unknown source for authentication.

Additionally, the landlord themselves, at the end of the testimony and submissions, called the document in question an “agreement”, which I find confirms their understanding the document was a legally binding contract.

As a result, I find the tenants are in a month-to-month tenancy with the landlords and the landlords may not enforce their Notice to end the tenancy. For this reason, I dismiss the landlord’s application seeking an order of possession of the rental unit and to recover the cost of the filing fee, without leave to reapply.

I order the tenancy to continue until it may otherwise end under the Act.

Conclusion

The landlords’ application seeking an order of possession of the rental unit pursuant to their Notice is dismissed, without leave to reapply, as I find the tenancy continued on a month-to-month basis after the effective move-out date listed on the Notice.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: February 4, 2022

Residential Tenancy Branch