



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, CNL

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 for the Landlord’s compliance – Section 62.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord confirmed receipt of the Tenant’s application and evidence. The Tenant confirms receipt of the Landlord’s evidence. The Parties confirm that they are not using a recording device for the hearing.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to an order of compliance?

Background and Evidence

The following are agreed or undisputed facts: the tenancy under written agreement originally started on February 1, 2020. Rent of \$4,200.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected a security deposit of \$2,100.00. On April 24, 2022 the Landlord gave the Tenant a two month notice to end tenancy for landlord’s use dated April 24, 2022 (the “Notice”). The Notice is signed by

the Landlord and sets out an effective date of June 30, 2022. The reason stated on the Notice is that the Landlord or the Landlord's spouse will occupy the unit.

The Tenant states that the fixed term of the tenancy was to end in January 2022. The Tenant states that prior to the end of the term the owner and the Tenant verbally agreed that the Tenant would be provided with another year for the tenancy for a fixed term from February 1, 2022 to January 31, 2023. The Tenant states that the owner was not in the province at the time and that the owner agreed that upon their return they would provide the written agreement to the Tenant. The Tenant states that as a result of this verbal agreement the Tenant's wife started on a course of medication that would otherwise inhibit their ability to move out of the unit.

The Tenant states that two weeks prior to the hearing the owner listed their own current residence, an apartment, for sale. The Tenant argues that this listing means that they only decided recently to move into the unit. The Tenant states that the Landlord has not yet sold the property. The Tenant states that the owner is wealthy and owns other houses. The Tenant states that the Landlord would be able to obtain higher rents for the unit than currently being paid by the Tenant.

The Landlord does not dispute that the owners said that they were going to extend the tenancy for another year but that they subsequently changed their mind. The Landlord states that each year the Parties have discussed the continuation of the fixed terms of the tenancy.

The Landlord does not know why the Landlord decided to move into the unit or the reasons for selling their current residence. The Landlord speculates that it may be due to market conditions or a change in the family make-up. The Landlord argues that the owner does not need a reason to want to move into their own property. The Landlord confirms that the owner's residence was listed on July 28, 2022. The Landlord states that the owner was prepared to list the unit earlier in the year but that since the Tenant

disagreed with moving out of the unit the owner had to serve the Notice and therefore delayed putting their residence on the market as they did not want to chance a sale of their residence without having possession of the unit to move into following the sale. The Landlord states that the owner only owns their residence and the unit within the lower mainland.

The Landlord states that since April 2022 the Tenant has been consistently late with rent payments. The Landlord states that the Tenant was previously given notices to end tenancy for unpaid rent but that the Tenant paid the rents in the time allowed. The Landlord states that if they are not successful with obtaining possession of the unit the Landlord will exercise their rights to otherwise end the tenancy with a one month notice to end the tenancy for cause, due to the repeat late rent payments since the service of the Notice. The Landlord argues that the owners have a good faith intention to move into the unit and have no intention to either rent or sell the unit. The Landlord argues that if the Landlord does not move into the unit the Tenant is entitled to make a claim for compensation equal to 12 months rent. The Landlord provides a copy of an email dated August 2, 2022 from the owner noting late rent payments.

Analysis

Section 1 of the Act provides that "**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 14(2) of the Act provides that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment. Despite the lack of a copy of the tenancy agreement provided for this hearing given the Tenant's undisputed evidence I find that there is a current written tenancy agreement, and that this agreement is for a fixed term ending January 31, 2022. From both the Parties undisputed testimony I find on a balance of probabilities that near the end of the fixed term of January 31, 2022, the Parties orally agreed that they would continue the

tenancy for another year from February 1, 2022 to January 31, 2023. There is no ambiguity on this term. It is undisputed that the Parties put their minds each year to an extension of the fixed terms of the tenancy. The Tenant's undisputed evidence is that the Landlord was to bring a written agreement for the fixed term extension to January 2023. There is no evidence that the Tenant did anything to stop the Landlord from presenting their oral agreement in writing. There is no evidence of misunderstanding of the term to extend the tenancy. I accept the Tenant's evidence that they relied on the extension of the fixed term to start a course of medical treatment and it is undisputed, whether paid late or not, that the Landlord collected rent from the Tenant following the oral agreement on extending the term for another year. For these reasons I find on a balance of probabilities that prior to January 31, 2022 the Parties entered into a binding oral agreement to extend the fixed term of the tenancy to end January 31, 2023.

Section 49(2)(iii) of the Act provides that a landlord a landlord may end a tenancy if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy. As the Parties entered into a binding agreement to extend the fixed term of the tenancy to January 31, 2023, I find that the Landlord could not end the tenancy at the time the Notice was served. For this reason, I find that the Tenant is entitled to an order cancelling the Notice. The tenancy continues.

As the Tenant made no submissions on their claim for an order of compliance and as there are no particulars in the Tenant's application on this claim that set out any failure of the Landlord to comply with the Act, I dismiss this claim.

Conclusion

The Notice is cancelled, 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: August 10, 2022

Residential Tenancy Branch