



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, FFL

Introduction

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

- an order of possession due to a mutual agreement to end tenancy pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant attended the hearing. Landlord LR attended the hearing. He was assisted by his son ("**MR**") and by counsel ("**VG**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

VG stated, and the tenant confirmed, that the landlords served the tenant with the notice of dispute resolution package and supporting documentary evidence. The tenant testified she sent a one-page statement to VG's office by regular mail but that it was returned to her. VG stated that he did not receive it. As the contents of the letter could have been given by the tenant as part of her verbal testimony in the hearing, and as the landlords are not entitled to notice of the contents of a parties verbal testimony prior to the hearing, I found it appropriate to read the tenant's statement (which was provided to the Residential Tenancy Branch (the "**RTB**") prior to the hearing) out loud so the landlord would be aware of its contents, and then have the tenant affirm that the statement was true.

Issues to be Decided

Are the landlords entitled to:

- 1) an order of possession; and
- 2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The tenant and the prior owner of the residential property entered into a verbal tenancy agreement in 1999. They did not have a written tenancy agreement. In July 2021, the residential property was sold to the landlords. LR testified that when the landlords purchased the residential property, the tenant's rent was approximately \$750.

The parties entered into a written tenancy agreement on February 1, 2022 (the "**2022 Tenancy Agreement**"). Monthly rent was increased to \$1,050. It indicated that the landlords held a security deposit of \$362 in trust for the tenant, which the landlords continue to hold. It listed the term of the tenancy as "ending in 10 months (Oct)" and attached a signed form #RTB-8 Mutual Agreement to End Tenancy form (the "**Mutual Agreement**"). The Mutual Agreement indicates that the tenancy would end on October 1, 2022.

The landlords rely on this Mutual Agreement as the basis to end the tenancy. LR testified that he met with the tenant on February 1, 2022 to discuss changes to the tenancy agreement and that tenant indicated that she wanted to move out of the rental unit in October 2022 and that they signed the Mutual Agreement to give effect to this desire.

At first, the tenant testified that she was not sure if she signed the Mutual Agreement. She testified that English was not her first language, and the landlord presented her the Mutual Agreement as a document that he needed to have signed for insurance purposes. After reviewing the Mutual Agreement, she confirmed that the signature on it was hers and that she signed it at the same time she signed the 2022 Tenancy Agreement.

LR testified that he filled out the 2022 Tenancy Agreement during a meeting with the tenant, in the rental unit, on February 1, 2022. He testified that he had brought a blank mutual agreement to end tenancy form with him as well. He testified that he did this because, prior to the meeting, the tenant advised him that she wanted to end the tenancy.

In her affirmed written statement, the tenant wrote:

On February 2022 he came to me without any notice and said he is going to sign new agreement with me and I need to pay more and I will stay in this place if not agree he will kick me out.

He was pushing me very hard, threatening that he will put all my belongings to the street.

He did not give me any time to check my rights and I signed up new agreement. He told me that he needs this agreement urgent for insurance of the house. My rent until February 2022 was \$750 for month and he increased my rent for almost 50% and asked to pay \$1050 which is illegal.

I do not know that by law in this moment (February 2002) it's supposed to be 1.5%. For all this time I paid \$300 more per month (12 months * \$300 = \$3600).

In October 2022 he came to me and told me that now I need to pay \$1400. I already knew, that by law he can't do it, by Canadian law this is illegal.

He told me "I am owner and this is my power and my law to do whatever I want".

The tenant testified that during the February 1, 2022 meeting with LR she told him that she wanted to remain in the rental unit until she could get a residence through BC Housing. She denied that she told LR she wanted to move out on October 1, 2022 or on any specific date. She testified that LR advised her that he had to put down a date for insurance purposes, which is why October 1, 2022 is on the Mutual Agreement. She testified that the landlord told her that she would be able to stay past this date, if she wanted. She theorized that the landlords want her to move out of the rental unit because she is paying far below market rent, and they could rent the rental unit out for significantly more.

LR denied that he suggested the October 1, 2022 date, and testified that it was suggested by the tenant. He stated that she did not indicate why she chose this date to move out. He denied telling her that she could remain in the rental unit past this date.

VG argued that, despite the plain language of the 2022 tenancy agreement, the parties have not entered into a "fixed term tenancy agreement". Rather, the 2022 tenancy agreement represented a continuation of the pre-existing prior verbal tenancy agreement between the tenant and the prior owner of the residential property. He submitted that the parties decided to "rectify the situation" (which I understand to mean the lack of a written tenancy agreement) and at the same time decided to enter into the Mutual Agreement.

VG argued that the reference to the Mutual Agreement in the 2022 Tenancy Mutual Agreement does not amount to an attempt of the landlord to contract out of section 44(3) of the Act, which caused a fixed term tenancy to automatically convert to a month to month tenancy at the end of the fixed term. He argued that in light of the fact that the tenancy predated the 2022 Tenancy Agreement, the Mutual Agreement should be understood as reduction of the tenant's desire to end the tenancy in October 2022 into writing.

VG argued that the issue of a rent increase was not the subject of this proceeding, and even if the increase in rent was invalid (which the landlord denies is the case) it would not cause the Mutual Agreement to be invalid. The Mutual Agreement can stand alone, in light of the fact the tenancy predated the 2022 Tenancy Agreement. He conceded that this would likely not be the case, if 2022 Tenancy Agreement represented the start of the tenancy.

Analysis

Section 5 of the Act states:

This Act cannot be avoided

5(1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Section 44(3) of the Act states:

How a tenancy ends

44(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

As such, a tenancy does not end at the end of a fixed term tenancy. Rather, it converts to a month-to-month tenancy. I find that the parties signing the Mutual Agreement at the same time as the 2022 Tenancy Agreement, and by referencing it in the 2022 Tenancy Agreement as the basis for the tenancy ending at the end of the fixed term, the landlord has attempted to avoid section 44(3) of the Act.

I do not find the landlord's testimony credible that the tenant told him, in advance of the February 1, 2022 meeting, that she wanted to move out of the rental unit on October 1, 2022. If this were the case, it would not have been necessary for the parties to enter into the Mutual Agreement. Rather, the tenant could have given written notice to end the tenancy pursuant to section 45(1) of the Act.

I find it more likely than not that, had the tenant informed the landlord that she wanted to move out on October 1, 2022, LR would not have attempted to enter into the 2022 Tenancy Agreement. I do not find that the lack of a written tenancy agreement required "rectifying", as the Act explicitly permits tenancy agreement to be "written or oral, express or implied". I do not understand the 2022 Tenancy Agreement to be a continuing of the verbal tenancy agreement, as it alters a substantive term of that agreement: the amount of monthly rent.

I do not agree with VG's submissions that the Mutual Agreement can stand on its own. The evidence shows that it was clearly created at the same time as the 2022 Tenancy Agreement, and that the 2022 Tenancy Agreement incorporated it into its own terms. I

must consider the Mutual Agreement in the context of the creation of the 2022 Tenancy Agreement.

I find that the 2022 Tenancy Agreement amounted to an attempt to contract out of section 44(3) of the Act, and that the Mutual Agreement formed a crucial part of this attempt. As such, I find the provisions in the 2022 Tenancy Agreement relating to the end of the fixed term of the tenancy and the Mutual Agreement itself to be invalid and of no force or effect.

Additionally, I find the tenant's submissions as to the motives for the landlords to be compelling, and more in line with the preponderance of probabilities. I accept her evidence that the LR approached her in February 2022 seeking to impose a rent increase. The fact that the 2022 Tenancy Agreement codified such an increase supports this. The landlord did not offer any explanation why the tenant would agree to this increase.

I accept the tenant's evidence that she told LR that she did not plan on staying in the rental indefinitely and that she intended to secure housing through BC Housing. Such a remark is consistent with a tenant trying to avoid a rent increase. I also accept the tenant's testimony that she never told LR that she would move out of the rental unit on October 1, 2022. It does not logically make sense for the tenant to agree to vacate her home of over 20 years, for which she pays below-market rent, without somewhere to go. As such, I accept that the tenant's testimony that LR advised her that he had to put a date down on the Mutual Agreement for "insurance" reasons, but that he would let her stay past this date. Based on the evidence presented at the hearing, this is the only reason I can see where the tenant would reasonably sign the Mutual Agreement.

For the reasons set out above, I do not find that LR's testimony that the tenant just wanted to move out on October 1, 2022 to be in line with the preponderance of probabilities. Where LR and the tenant's testimony differs on the circumstances leading to the creation of the 2022 Tenancy Agreement and the Mutual Agreement, I prefer the tenant's.

As such, I do not find that the Mutual Agreement is valid. I find that LR made material misrepresentations (that he would not enforce the Mutual Agreement) to the tenant which induced her to sign it, or alternately made verbal representations to her that the tenancy would continue despite the Mutual Agreement. Under either of these scenarios, I do not find that the Mutual Agreement represents the true intentions of the parties to end the tenancy on October 1, 2022.

Accordingly, I decline to grant the landlords an order of possession.

As the landlords have been unsuccessful in the application, I decline to order that the tenant reimburse them the filing fee.

As the issue of the validity of a rent increase is not before me in this application, and the parties did not make fulsome submissions on the topic, I specifically make no decision as to the proper amount of rent owing.

Conclusion

I dismiss the landlords' application, in its entirety, without leave to reapply.

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: March 15, 2023

Residential Tenancy Branch