



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OP, MNDC, FF, MT, CNL

Introduction

This hearing was convened in response to applications filed by both the tenant and the landlord.

The tenant seeks:

1. More time to make an application to cancel a Notice to End Tenancy;
2. An Order to cancel a Notice to End Tenancy for landlord's use; and
3. A monetary Order for compensation for damage of loss.

The landlord seeks:

1. An Order of Possession;
2. A monetary Order for compensation for damage or loss; and
3. Recovery of the filing fee.

Both parties appeared at the hearing of this matter and gave evidence under oath.

Issue(s) to be Decided

Is either party entitled to the Orders sought?

Background and Evidence

At the hearing of this matter both parties withdrew their applications for monetary awards.

In his application the tenant states that the roof leaks and that the house is full of mould which is making him sick and he is having a hard time moving out. The tenant says he

has a great deal of goods to move. The tenant submits that he should have been moved out a long time ago and because it is taking him so long to move he is having to pay rent at two places. The tenant says this rental unit is in such poor shape it is unfit to be rented out. The tenant says he need more time to move because he is sick and can only get so much work done in a day.

The landlord submitted a Contract of Purchase and sale that shows that the tenant sold the rental unit to the landlord on September 19, 2011 for \$535,000.00. The Contract contains a completion and possession date of November 30, 2011. The landlord submitted that as a condition of sale the seller/tenant requested a lease back of the property until September 30, 2012 and he agreed to pay rent of \$750.00 per month. This agreement is contained within the Contract of Purchase and Sale. The Contract also shows that the seller/tenant agreed that he would maintain and upkeep the property at his own cost during this time period. The landlord submitted a Property Condition Disclosure Statement dated May 11, 2011 upon which the seller/tenant has noted that the rental unit "needs a roof (leaks)".

The landlord says that despite his agreement to vacate on September 30, 2012 the tenant did not do so. The landlord says that

The landlord submitted a letter from the City of Mission Inspection Services advising that the owner of the property would be subject to a Municipal Ticket carrying a \$200.00 fine for each day the materials and rubbish remain on the property. The owner was given until July 31, 2012 to clean up the property. The tenant wrote on the letter "End of September 2012 will have all of the back cleaned up will try to clean up back behind trees by the end of July."

The landlord testified that that the tenant requested and extension to allow him to remain on the property longer. On January 10, 2013 the landlord attended the property with his financial consultant. They noted that instead of being in the process of moving out there several additional cars and trucks had been moved onto the rental property and there was a large quantity of dismantled lawnmowers, garden tractors, bicycles, garbage and debris scattered over the property. Further, that the tenant had parked his camper trailer on the adjacent property. The landlord submitted photographs of the items on the properties.

The landlord says that this property was purchased as a development property and the landlord wished for the tenant to vacate so he could get on with demolition and redevelopment of the property. The landlord says that in order to give the tenant more time to remove all of his goods he reluctantly agreed to extend the tenant's stay until

February 28, 2013 at 12 noon. On January 11, 2013 the parties signed a Mutual Agreement to End a Tenancy which was submitted in evidence. The landlord submits that he advised the tenant that he would be willing to engage the services of a third party or moving company to assist the tenant with the removal of his goods.

The landlord says he inspected the property on February 28, 2013 and, once again no progress has been made with respect to moving. The landlord says the property has deteriorated further and it is impossible for him to commence redevelopment of the property as planned.

With respect to the service of a notice to end tenancy the landlord says it depends on what is meant by a Notice to End Tenancy. The landlord says they signed a Mutual Agreement to End Tenancy and the landlord wishes that agreement enforced and an Order of Possession to be issued based on that Agreement.

The tenant says he does remember some papers but does not remember whether he signed the Mutual Agreement to End Tenancy. He says that his health is poor and his memory is poor and he needs more time to move out. The tenant submits that he does wish to leave but he cannot be evicted from his property because he is ill, that his illness is caused by the mould in the property.

The landlord responded that the tenant definitely signed the Mutual Agreement to end this tenancy. The landlord submits that he had a witness with him at the time and also that if one compares the tenant's signature on the Mutual Agreement with those shown on the other documents filed in evidence one can easily determine that it is the tenant's signature.

Analysis

Despite their applications seeking Orders based on the service of a variety of Notices the parties agree that actual Notices to End Tenancy as described in the *Residential Tenancy Act* and as provided by the Residential Tenancy Branch have not been served. Instead the landlord submitted a Mutual Agreement to End Tenancy which he says should be sufficient to end this tenancy and upon which he seeks an Order of Possession. However the tenant says he does not recall signing it.

I have compared the tenant's signature as shown in the Mutual Agreement to End a Tenancy with his signature shown in the Contract of Purchase and Sale, the Property Condition Disclosure Statement and the Removal of Subject to Clause and they are clearly the same. Further, if the tenant did not sign the Mutual Agreement to End

Tenancy and as the parties agree that no Notices to End Tenancy were served, why did the tenant think that the tenancy was ending such that he found it necessary to make an application seeking more time and seeking to cancel a notice? I find it is reasonable and probable to find that he made that application actually seeking to cancel the Mutual Agreement to End a Tenancy that he signed. I find that the Mutual Agreement to End this tenancy was signed on January 11, 2013.

The landlord does not wish to cancel that Agreement and he is seeking to have the tenant immediately comply with its terms. The tenant is seeking more time to move due to health issues however the law does not allow me to use this consideration in making my decision.

With respect to the date of the end of this tenancy, the parties agreed this would take place at noon on February 28, 2013. It is now April 10, 2013 and the landlord wishes this tenancy to end at the earliest possible moment. Based on the Agreement I find that the landlord is entitled to an Order of Possession effective two days after service on the tenant.

As the landlord has been successful in this application I will allow him to recover the filing fee he has paid in the sum of \$50.00. As it is not clear whether the tenant paid a security deposit from which this sum could be retained I will also issue a monetary Order in favour of the landlord in the sum of \$50.00.

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: April 10, 2013

Residential Tenancy Branch