Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAGSEN REALTY INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC FF

Introduction

The tenant applied to enforce what he considered to be the landlord's obligation to continue to rent the rental unit to him after the end of a fixed tenancy. Subsequent to the application the tenant vacated the premises and has amended his claim to seek damages for breach of that obligation.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the landlord was legally obliged to continue renting to the tenant and has breached that obligation? If so, what damages has the tenant reasonably suffered as a result of the breach?

Background and Evidence

The rental unit is a three bedroom home. The written tenancy agreement signed by the parties shows that the tenancy started in April 2013 for a one year fixed term at a monthly rent of $2200.00. An $1100.00 security deposit was made but it has been paid back. The agreement provides that at the end of the year the tenancy ends and the tenant must vacate the premises. That provision in the agreement was specifically initialled by the parties.

There is no dispute but that the tenant and his wife were looking for the security of a longer term than just a year. Indeed, the parties did not sign the original agreement at their first meeting. As Ms. V.B. testified, the landlord said "no" to a two year fixed term; wanting only one year at a time. She said that she and her husband were not prepared to sign a one year fixed term agreement requiring them to vacate at the end of that year.

Mr. Y. for the landlord testified that the owner was only prepared to rent for one year because she or "they" as Mr. Y. described her, might want to move in themselves.

The parties reached agreement when the landlord (the agent of the undisclosed owner) offered two handwritten additions to the addendum to the originally proffered one year agreement. Those additions were:

> *All rent increase will follow the RTO restriction. Ie 3.8% for 2013
> and
> *If the Landlord wishes to rent the property after tenancy, The Tenant gets the first option to rent.

The parties initialled the additions and the tenancy agreement was complete.

In perhaps March 2014 the tenants began to inquire about what was happening at the upcoming end of the fixed term May 31, 2014. They were keen to continue living in the house and had made a number of improvements over the year. There was no definitive response from the landlord.

On April 25, the owner and perhaps six other people showed up for a pre-arranged inspection. Shortly after, on April 30th, the tenants were delivered of a letter from the landlord (referring to itself as the "agent of the landlord") indicating that the landlord had decided not to "renew" the tenancy and requesting the tenant vacate by May 31st. No reasons were given.

The tenant immediately commenced this proceeding. On May 9th the parties met in an attempt to resolve the matter. Both sides gave evidence about what was offered and counter offered. No agreement was reached. In my view evidence of the negotiations surrounding a failed attempt to settle a dispute are "without prejudice" communications and are not admissible as evidence. I therefore give that evidence no consideration in this decision.

As the month of May passed, the tenant determined it to be in his best interest to vacate the premises in order to reduce his possible legal exposure. His claim was accordingly amended to seek damages.

The tenant and his family vacated on May 31st but due to the short time available between his decision to move and the end of the fixed term, he was only able to secure a one bedroom apartment for himself, his wife and their two toddlers. He has incurred significant moving expenses as well as storage fees, having had to place much of family belongings into storage pending his locating a more suitable home.

Since May 31st, the tenant and his wife have driven by the premises and even knocked on the door. It is their contention that no one is living in the home.

Mr. Y. testifies that the owner is occupying the home and that she and her family intend to stay there for an indefinite period.

There was some earlier correspondence to the effect that a relative of the owner would be occupying the premises but not paying rent. Ms. B.V. argues that such a relationship would constitute a tenancy under the interpretation provisions of the *Residential Tenancy Act* (the "*Act*") and so the tenant should have been entitled to exercise his option, or "right of first refusal" as the tenant and Ms. B.V. refer to it elsewhere in their evidence.

Analysis

It is a principle of contractual interpretation that ambiguities in the wording of a contract are to be interpreted against the one who drafted the contract. In the same vein, residential tenancy legislation has been determined by the courts to be consumer protection legislation and interpreted in the tenant/consumer's favour in case of doubt.

I have carefully considered the wording of this tenancy agreement and the negotiations leading up to it. Even applying an interpretation preferential to the tenant, I cannot agree that the landlord has breached the agreement.

The written agreement says the term of this tenancy ends May 31, 2014 and the tenant must move out. It could not be plainer. Evidence was given of the negotiations, intentions and discussions leading up to that agreement, but strictly speaking, that evidence (by a legal principle called "the parol evidence rule") cannot be lead to contradict the plain wording of the agreement. There are many exceptions to that rule but none are applicable on these facts. The written agreement governs.

The second handwritten addendum clause, even given the strictest interpretation in favour of the tenant, contemplates an eventuality dependent on the landlord's decision to continue to rent the premises after May 31 2014 or not. Only then will the tenant be given the "option" to rent.

I find that the landlord made the decision not to rent the home. It is apparent that the group visit on April 25th were the owner and her family; there to decide whether to move in or not. Whether or not the landlord and family are actually residing in the home, she is not renting it out.

That a relative of the owner might be permitted to stay at the home without paying rent does not create a tenancy under the *Act*. For a landlord and tenant relationship or even a "license to occupy" relationship to arise there must be an intention on both sides to enter into that legal relationship. There is no evidence of that here.

The tenant proposes that the vagueness of the landlord's position about who would occupy the home and certain inconsistencies in correspondence over the last two months of the tenancy equate to a bad faith intention by the landlord to avoid its obligation under the handwritten "option." I disagree. The tenant's argument is speculative at best. In my view the landlord had no obligation to inform the tenant of anything unless and until it made the decision to offer the premises for rent after May 31st. Only then was the landlord obliged to contact the tenant and offer him "first option to rent."

Conclusion

Despite the unfortunate circumstances the tenant and his family find themselves in, I must dismiss his application.

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: June 19, 2014

Residential Tenancy Branch