



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

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Introduction

This hearing convened pursuant to the tenant's application for an order that the landlord comply with the Act, regulation or tenancy agreement. At the outset of the hearing the landlord stated that they had also filed an application, seeking an order of possession pursuant to a fixed-term tenancy. The landlord stated that the issues in their application were the same as the issues in the tenant's application. Over the course of the hearing it became clear to me that the issues were the same in both applications, those being (a) whether the tenancy was a month-to-month tenancy or a fixed term; (b) if it was a fixed term, what date the tenancy was to end; and (c) whether the landlord was entitled to an order of possession pursuant to the fixed term. I therefore have joined the applications of the landlord and the tenant.

In the hearing the landlord stated that they had served the tenant with the landlord's evidence by registered mail and regular mail. The tenant stated that she refused to accept the registered mail package because it did not have a return address. The tenant confirmed that she did receive the second package of the evidence by regular mail, but she had not yet opened the package. The tenant stated that she felt the issues were simple, and she wished to proceed with the hearing rather than adjourn. I therefore proceeded with the hearing. The tenant was given sufficient time during the hearing to view and fully respond to the landlord's evidence.

I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the tenancy was a month-to-month tenancy or a fixed term?

If the tenancy is for a fixed term, what date is the fixed term to end?

Is the landlord was entitled to an order of possession?

Background and Evidence

The tenant first occupied the rental unit under a fixed-term tenancy agreement that began on July 1, 2012 and ended on June 30, 2013. After that date, the tenancy continued on a month-to-month basis.

In 2014, the landlord and the tenant had several discussions regarding the terms of the tenancy agreement, including whether to enter into another fixed-term agreement. On July 24, 2014 the landlord and the tenant signed an addendum to the tenancy agreement for a fixed term ending either September 7, 2014 or November 30, 2014. On the end date of the fixed term the tenant must vacate the unit.

Tenant's Evidence

The tenant stated that on July 24, 2014 she signed a two-page addendum for a fixed-term tenancy that was to end on September 7, 2014. The tenant submitted a copy of the addendum, the first page of which indicates a fixed term ending September 7, 2014. The tenant stated that she signed the document under duress, after the landlord threatened that "it's going to get ugly." The tenant's position is that the document she signed is not valid and the tenancy runs month to month.

Landlord's Evidence

The landlord stated that the document the tenant signed on July 24, 2014 was for a fixed term ending November 30, 2014. The first page of the landlord's copy of the addendum signed on July 24, 2014 indicates that the tenancy was for a fixed term ending November 30, 2014. The landlord submitted several documents including emails showing the various tenancy agreements and terms proposed by the parties. Included in the landlord's evidence are two emails, the first from the landlord sent to the tenant on September 2, 2014, in which the landlord refers to the "extended term to on or before November 30, 2014" and requests that the tenant let the landlord know in advance when they can meet to inspect the rental unit. In the second email, sent by the tenant to the landlord on September 6, 2014, the tenant replies to the landlord's email of September 2, 2014 and admits she her temper with the landlord the previous evening and spoke her mind. The tenant does not contradict the landlord's email indicating that the tenancy will end on November 30, 2014.

The landlord seeks an order of possession pursuant to the fixed term ending November 30, 2014.

Analysis

Upon consideration of the evidence and on a balance of probabilities, I find as follows.

I find that the document signed by the parties on July 24, 2014 was for a fixed term ending November 30, 2014. Had the tenant signed for a fixed term ending September 7, 2014 I do not find it likely that the tenant would fail to address in her September 6, 2014 email the landlord's reference to the fixed term ending November 30, 2014.

I do not accept the tenant's submission that she signed the document under duress. The tenant clearly continued negotiating for different terms of the tenancy even after signing the July 24, 2014 agreement, and her email correspondence shows displeasure with the landlord's refusals to further negotiate, rather than any indication of fear of harm or threats by the landlord.

I therefore find that the addendum to the tenancy agreement ending the fixed term and requiring the tenant to move out on November 30, 2014 is valid. The landlord is entitled to an order of possession for that date.

Filing Fees

As the tenant's application was not successful, she is not entitled to recovery of the filing fee for the cost of her application.

As the landlord's application was successful, they are entitled to recovery of the \$50 filing fee for the cost of their application.

Conclusion

The tenant's application is dismissed.

I grant the landlord an order of possession effective November 30, 2014. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: October 27, 2014

Residential Tenancy Branch

