



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62 of the Act.

I left the teleconference connection open until 9:48 A.M. to enable the landlord to call into this teleconference hearing scheduled for 9:30 A.M. The landlord did not attend the hearing. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

I accept the tenant's testimony that the landlord was served with the application and evidence (the materials) by registered mail on July 18, 2020, in accordance with section 89(1)(c) of the *Act* (the tracking number is recorded on the cover of this decision).

Section 90 of the *Act* provides that a document served in accordance with Section 89 of the *Act* is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the landlord is deemed to have received the materials on July 23, 2020, in accordance with section 90 (a) of the *Act*.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Issue to be Decided

Is the tenant entitled to an order for the landlord to comply with the Act, regulations, and/or tenancy agreement?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claim and my findings are set out below.

The tenant affirmed the tenancy started on December 01, 2019. Monthly rent is \$1,500.00, due on the last day of the prior month. At the outset of the tenancy a security deposit of \$750.00 was collected and the landlord still holds it in trust. The tenancy agreement was submitted into evidence.

The tenancy agreement submitted into evidence states: "Short term Lease application/agreement, under the INN KEEPERS ACT OF BC".

The tenant stated his full-time residency is at the rental unit since December 01, 2019.

The tenancy's original termination date was May 31, 2020 and then it continued as a periodic tenancy. The agreement states:

Final end date of three months lease; Termination date: May 31,/19 If both parties agree to extend this lease, then it shall become a one month renewing lease until either party gives the other written notice (to not renew the lease at the end of the month), before the 15^h of the month then the lease ends at the end of the month.

The tenant explained "May 31/19" was a typo and the correct original termination date was May 31, 2020.

On July 12, 2020 the tenant gave notice to end a periodic tenancy by email: "my [anonymized] has found new housing for me, I take possession Sept 1, therefore August will be my last month here".

The landlord replied on the same day:

This is not what you agreed to.
If you choose not to abide by your agreement.
This is an official notice as per the signed tenancy agreement, of official written notice to move before the 15th of the month of July to vacate the premises known as [anonymized] at the end of the month of July, 2020.

The tenant affirmed the landlord threatened to illegally evict him by the end of July or before the end of August 2020 and the tenant does not want to leave the rental unit before August 31, 2020. Rent for August 2020 was paid in full.

Analysis

Sections 13 of the Act states:

13. Requirements for tenancy agreements

(1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

(a) the standard terms;

(b) the correct legal names of the landlord and tenant;

(c) the address of the rental unit;

(d) the date the tenancy agreement is entered into;

(e) the address for service and telephone number of the landlord or the landlord's agent;

(f) the agreed terms in respect of the following:

(i) the date on which the tenancy starts;

(ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;

(iii) if the tenancy is a fixed term tenancy, the date on which the term ends;

(iii.1) if the tenancy is a fixed term tenancy in circumstances prescribed under section 97 (2) (a.1), that the tenant must vacate the rental unit at the end of the term;

(iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;

(v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;

(vi) which services and facilities are included in the rent;

(vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

Based on the tenant's testimony and the tenancy agreement, I find the tenancy agreement submitted into evidence is not on the standard residential tenancy agreement terms but meets the other requirements of section 13(2) of the Act.

Section 5 of the Act states:

5. This Act cannot be avoided

(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.

Considering section 5 of the Act, I find the tenancy is under the Act and I have jurisdiction to hear this matter.

Based on the tenant's undisputed testimony, tenancy agreement and emails, I find a fixed-term tenancy commenced on December 01, 2019 and on June 01, 2020 this tenancy continued as a periodic tenancy, in accordance with section 13(2) of the Act.

Section 44(1) of the Act states:

A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [tenant's notice];

(i.1) section 45.1 [tenant's notice: family violence or long-term care];

(ii) section 46 [landlord's notice: non-payment of rent];

(iii) section 47 [landlord's notice: cause];

(iv) section 48 [landlord's notice: end of employment];

(v) section 49 [landlord's notice: landlord's use of property];

(vi) section 49.1 [landlord's notice: tenant ceases to qualify];

(vii) section 50 [tenant may end tenancy early];

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

Based on the tenant's undisputed testimony, tenancy agreement and emails, I find the landlord is attempting to end the tenancy not complying with section 44 of the Act.

As such, I order the landlord to comply with the tenancy agreement and section 44 of the Act.

Conclusion

I order the landlord to comply with the tenancy agreement and section 44 of the Act. The tenancy continues until ended in accordance with the Act.

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: August 25, 2020

Residential Tenancy Branch