Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Union Gospel (Heatley) Housing Society and [tenant name suppressed to protect privacy]

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.

Both parties attended the hearings. The landlord was represented by manager RC and assisted by counsel AJ and articling student TC. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Both parties affirmed they understand that if they disagree with something the other party has said they should make a note of it, and then address it when it is their turn to speak.

Issue to be Decided

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

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, 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. I explained

rule 7.4 to the attending parties; it is the tenant's obligation to present the evidence to substantiate his application.

Both parties agreed the tenancy started on October 01, 2017 and the tenant continues to occupy the rental unit. The tenancy agreement was submitted into evidence. Section 02 (a) states:

> The resident understands and agrees that [anonymized] is an accommodation which is exempt from the rules that apply to an ordinary tenancy agreement under the Residential Tenancy Act […]

Both parties agreed that despite this clause in the tenancy agreement, the Act does apply to the tenancy agreement. The landlord stated the tenancy agreement currently used states the Act applies. The revised tenancy agreement was submitted into evidence. Section 01 (a) states:

> Residential Tenancy Act. The parties acknowledge and agree that the tenancy created by this Agreement (the "Tenancy") is subject to the Residential Tenancy Act (British Columbia) and any regulations made thereunder (collectively, the "Act") and if there is a conflict between this Agreement and the Act, the Act prevails. The prescribed standard terms attached to this Agreement at Schedule A (the "Prescribed Standard Terms") are required under the Act and form a part of this Agreement.

The tenant affirmed the tenancy agreement is unlawful, there are offences and terms that either are void or unconscionable and are unenforceable under the Act. The tenancy agreement is not supportive long term housing, the landlord is not properly named, and the landlord's address for service and phone number are not correct.

The landlord stated the tenant did not identify which sections of the tenancy agreement are void and did not explain why the tenancy agreement is unlawful. The tenancy agreement is perfectly enforceable and the landlord complies with the Act. The landlord's name, address for service and telephone mentioned in the tenancy agreement are correct and the tenant had no difficulties serving the landlord.

The tenant said the tenancy agreement should list, in the following order, the tenant's name, unit number, start date of the tenancy and amount of the security deposit. The tenancy agreement contravenes section 13(2) (a), (b) and (e) of the Act and section 32 (c), (d) and (e) of the Regulation and should be fined under section 95 of the Act. The tenant stated this decision should be published and made available to British Columbia

Housing Management and other tenants in the neighbourhood have similar complaints against the same landlord.

The landlord affirmed the tenant has submitted other complaints against him and the landlord always tried to address them in good faith. The complaint submitted by the tenant regarding the tenancy agreement is the only one the landlord is aware of. The landlord claimed only the British Columbia Crown Counsel has authority to offer charges regarding section 95 of the Act.

The tenant replied affirming it is the duty of the Residential Tenancy Branch to take this case to the provincial courts.

At the end of the first hearing, after 79 minutes, when the tenant was offered a chance to make closing arguments, he insisted he needed to provide extra testimony to present his evidence. The hearing was then adjourned. During the 50 minute-reconvened hearing the tenant mostly repeated his testimony provided in the first hearing and insisted the Act applies, although the landlord does not dispute this and agreed the Act applies to the tenancy agreement at the beginning of the first hearing. The tenant also affirmed the landlord lied during his testimony and the landlord denied that he lied.

I note that in the reconvened hearing I explained to the tenant that he needed to point specifically why the tenancy agreement is unlawful. The tenant repeatedly read sections of the Act and the Regulation. In two occasions when the landlord was replying to the tenant's testimony he interrupted in a disorderly manner and I warned the tenant twice.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 05 of the Act states:

> (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.

As both parties agreed the Act applies to the tenancy agreement and the new tenancy agreement currently used by the landlord states the Act applies, I find it is not necessary to issue an order for the landlord to comply.

In the case before me, both parties offered conflicting testimony regarding the landlord's name, address for service and phone number. The tenant was vague and did not provide any details or evidence of why the landlord's name, address for service and phone number listed in the tenancy agreement are wrong. The landlord affirmed the landlord's name, address for service and phone number listed in the tenancy agreement are correct.

I find the tenant has failed to prove, on a balance of probabilities, the landlord's name, address for service and phone number listed in the tenancy agreement are wrong.

The tenant's testimony during the total 129 minutes of hearing was extremely vague and confusing. The tenant insisted several times the tenancy agreement is unlawful and void. Although I explained to the tenant that he needed to point specifically why the tenancy agreement is unlawful he repeatedly read sections of the Act and the Regulation. The tenant did not state which standard terms the tenancy agreement is missing. Section 13(2)(f) of the Act does not require the tenancy agreement to list the agreed terms in any specific order.

Section 62 (4) of the Act states:

> The director may dismiss all or part of an application for dispute resolution if
> (a)there are no reasonable grounds for the application or part,
> (b)the application or part does not disclose a dispute that may be determined under this Part, or
> (c)the application or part is frivolous or an abuse of the dispute resolution process.

I find there are no reasonable grounds for this application and the tenant is abusing his right to apply for dispute resolution under the Act. Thus, I dismiss the tenant's application without leave to reapply.

Conclusion

I dismiss the tenant's application 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: October 16, 2020