



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: OLC, FF

Introduction

This application was brought by the tenant seeking an Order that the landlord comply with the rental agreement and the *Act* and recovery of the filing fee for this proceeding.

Issue(s) to be Decided

During the hearing, the parties advised that they had come to agreement on all issues in dispute except for an addendum to the rental agreement which states that, "The tenant acknowledges that the landlord is not responsible to pay one months rent and/or any other penalties associated with the end of the fixed term lease."

Background and Evidence

The question arose from the fact that, since the tenant made application, the landlords served her on August 23, 2007 with a Notice to End Tenancy for landlord use to take effect on October 31, 2008. As a matter of note, that date coincides with the end of tenancy date agreed upon in the fixed term tenancy agreement which began August 1, 2008. The current landlords took possession of the rental unit on or about August 14, 2008 but one of them was a signatory on the rental agreement dated August 1, 2008.

While that issue was not before me, I simply advised the applicants of the provisions of section 6(3) of the *Act* which states that any term of a rental agreement that is inconsistent with the *Act* or *Regulations* is unenforceable. In addition, the parties were advised that if the tenant wished to contest the Notice to End Tenancy for landlord use, she would have to file a new application as the current application pre-dated the notice.

In reviewing the provisions of section 49 and 51 of the *Act* with the parties, before being clear on the fact that this was a fixed term agreement, I advised the parties of the provision which allows a tenant under such notice to end the tenancy by providing 10-day notice to the landlord. **Please be advised that 10-day tenant notice is a privilege granted only in the case of a period tenancy and would not apply in the present case of a fixed term tenancy.**

As to the service of Notice to End Tenancy for landlord use – even though it was unnecessary in view of the fixed term agreement which did not provide for a month to month continuation – the parties questioned whether the provision of section 51(1) of the *Act* (tenants compensation of one month's rent) remained applicable. They were directed to the appropriate section of the statute and to contact that Residential Tenancy Branch information line for guidance on the question.

As the landlord had made every reasonable effort to address the tenant's concerns before the hearing, I find that the tenant should remain responsible for the filing fee for this proceeding.

September 5, 2008
