

DECISION

Dispute Codes OPB, FF

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, seeking to end the tenancy because the Tenants have allegedly breached an agreement with the Landlords and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issues(s) to be Decided

Have the Tenants breached an agreement with the Landlords?

Background and Evidence

The Landlords are alleging that the Tenants have breached (or will breach) the term tenancy agreement between the parties, by failing to vacate the rental unit at the end of the tenancy agreement.

The parties used a standard, statutory form, tenancy agreement and indicated in that document that this was a one year term tenancy agreement which will expire on January 31, 2010 (the "Agreement"). The parties signed the Agreement on January 16, 2009.

The current Agent for the Landlord explained that the Landlords never intended to have a month to month tenancy after the Agreement initial term ended. The Landlords are seeking clarification on whether or not the Tenants must vacate the rental unit on January 31, 2010, or if the tenancy continues on a month to month basis.

At the time of entering the Agreement the Landlords had a different Agent representing them. The Tenants never met with the Landlords, they only dealt with the Agent representing the Landlords at that time. The former Agent for the Landlords appeared as a witness at the hearing.

In the standard form agreement there is a box to check off if the tenants must vacate the rental unit at the end of the term tenancy. Alongside this box is an area which requires the initials of the tenant and the landlord if the box has been checked off.

In the Agreement before me, the box indicating the Tenants must vacate is not checked off, but there are initials from the Tenants and the Landlords in the adjacent boxes.

There is a second box indicating that at the end of the fixed term the tenancy the tenancy may continue on a month to month basis. This box has been checked off.

The affirmed testimony of the witness, who at the relevant time was the Agent for the Landlords, was that he had intentionally checked off the box indicating the tenancy would continue on a month to month basis following the end of the term. He further testified it was simply his practice to have the parties initial the boxes in all instances.

The Tenants also agreed they understood the Agreement would revert to a month to month tenancy at the end of the initial term.

Analysis

Based on the foregoing, the testimony and evidence, and on a balance of probabilities, I dismiss the Application for Dispute Resolution by the Landlords for an Order of Possession and to recover the filing fee. I find that the Agreement will convert to a month to month tenancy on February 1, 2010, when the initial term expires on January 31, 2010.

The Act requires that if the Tenants were obliged by the Agreement to vacate at the end of the term, that this must be clearly set out. The box indicating the Tenants would vacate is not checked off in the Agreement.

The Agreement and the testimony regarding the intention of the parties are consistent. The Agreement indicates the parties intended that the tenancy would continue on a month to month basis following the end of the initial term and they checked this box off.

Therefore, I find this tenancy will continue 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: January 12, 2010.

Dispute Resolution Officer