

Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

OP

FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession based on the expiry of the tenancy specified in the fixed term tenancy agreement made between the parties.

Although served with the Application for Dispute Resolution and Notice of Hearing in person at 4:00 p.m. on April 6, 2010, the tenant did not appear.

Issue(s) to be Decided

The issue to be decided at this hearing is whether or not the landlord is entitled to receive an Order of Possession based on the terms of the tenancy agreement made between the parties.

Background and Evidence

According to the landlord, the tenancy began on December 15, 2009 and was for a fixed term ending on March 31, 2010. The landlord had submitted into evidence a copy of the tenancy agreement signed by all parties on January 5, 2010. The rent was set at \$675.00 and a deposit of \$337.50 was paid. The agreement specified that the fixed term would expire on March 31, 2010 and that the tenant was required to vacate the rental unit on that date and was initialled by the parties.

The landlord testified that the tenant had been reminded about the expiry date of the agreement and indicated that the tenant did not intend to move out. The landlord testified that, despite the fact that the tenancy had ended as of March 31, 2010, the tenant was still occupying the unit.

The landlord was seeking an Order of Possession to force the tenant to comply with the terms of the agreement.

Analysis

Section 6 of the Act states that the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement and that a landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) [*determining disputes*].

Section 58 of the Act states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of: (a) rights, obligations and prohibitions under this Act; (b) rights and obligations under the terms of a tenancy agreement that

- (i) are required or prohibited under this Act, or
- (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or common areas or services or facilities.

In this instance, the landlord is seeking to have the terms tenancy agreement enforced and I find that this matter is within my authority to determine. The landlord is seeking to end the tenancy.

Section 44 of the Act states that a tenancy can only end 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*];
- (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 provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy; (my emphasis)

(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

Section 55(2) of the Act states that a landlord may request an order of possession of a rental unit by making an application for dispute resolution in situations where :

(a) a notice to end the tenancy has been given by the tenant;

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

(c) the tenancy is a fixed term agreement that provides that the tenant will vacate the rental unit at the end of the fixed term; (my emphasis)

(d) the landlord and tenant have agreed in writing that the tenancy is ended.

Based on the evidence, I find that the parties had signed a fixed term tenancy agreement that ended the tenancy on March 31, 2010 and the tenant is required to vacate by that date under the terms of the fixed-term agreement. Accordingly, I find that the tenant is over-holding and that the landlord is entitled under section 55(2)(c) to an Order of Possession

Conclusion

I hereby grant the landlord an Order of Possession effective 2 days after service.

I find that the landlord is entitled to be reimbursed the \$50.00 fee paid by the landlord for this application and may retain this amount from the \$337.50 security deposit being held on behalf of the tenant. The \$287.50 remainder of the deposit must be administered in compliance with section 38 of the Act.

April 2010

Date of Decision

Dispute Resolution Officer