

## **DECISION**

**Dispute Codes:** *OPB, MNDC, FF*

### **Introduction**

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for an order of possession and for a monetary order for unpaid rent, loss of income and for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the landlord entitled to an order of possession? Is the landlord entitled to rent, loss of rental income and the filing fee?

### **Background and Evidence**

The tenancy started on April 01, 2010 for a fixed term of two months ending on May 31, 2010. The landlord filed a copy of the tenancy agreement which indicates that the tenant initialled the term that states that on May 31, 2010, the tenancy ends and the tenant must move out of the residential unit. The landlord is applying for an order of possession as the tenancy has ended but the tenant continues to occupy the rental unit. The tenant has not paid rent for the months of June and July 2010.

The landlord stated that on May 24, 2010, a letter was sent to the tenant reminding him that the tenancy was ending on May 31 and gave him information on what procedures were in place with regard to use of the elevator and the final inspection. The tenant acknowledged receipt of this letter. On May 28, the landlord sent the tenant another reminder of the end of the tenancy. The landlord also filed copies of two 24 hour notices given to the tenant to conduct showings of the unit to prospective tenants on May 25 and May 28.

The tenant argued that the tenancy did not end on May 31 as he had entered into another fixed term tenancy on or about May 07, 2010. The tenant was unsure of the date or the time that he signed this alleged agreement and did not have a copy to support his testimony. The tenant said that he gave the landlord three post dated

cheques in the presence of his witness and filed a letter from the witness to confirm that he had witnessed the tenant sign a tenancy agreement and give the landlord three post dated cheques.

The landlord stated that he had not entered into a tenancy agreement with the tenant other than the one that ended on May 3, 2010. He also stated that he did not receive any cheques from the tenant for the three months following the end of the lease.

### **Analysis**

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case, I find that the tenant was unable to provide evidence to support his claim of having entered into another fixed term tenancy agreement on or about May 07, 2010. Therefore on a balance of probabilities, I find that the tenant's claim must fail and the only tenancy agreement entered into by both parties is the one dated April 01, 2010.

Section 44 (1) (b) of the *Residential Tenancy Act* states that a tenancy ends if 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.

Based on the signed tenancy agreement, I find that the tenancy ended on May31, 2010 and that the tenant should have moved out by that date.

Therefore the landlord is entitled to an order of possession and pursuant to section 55(2); I am issuing a formal order of possession effective on or before 1:00 p.m. on July 28, 2010. The Order may be filed in the Supreme Court for enforcement.

I also find that the landlord is entitled to rent for the months of June and July. The landlord has applied for loss of income for August. The landlord is at liberty to make

application in the event that the unit remains vacant despite the landlord's attempts to advertise the availability of the unit and conduct showings to prospective tenants.

The landlord has proven his case and is therefore entitled to \$50.00 for the filing fee. Overall the landlord has established a claim for \$2,850.00 I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the landlord an order of possession effective on or before **1:00 p.m. on July 28, 2010** and a monetary order for **\$2,850.00**.

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: July 16, 2010.

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Dispute Resolution Officer