

DECISION

Dispute Codes O F F

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession based on a fixed term tenancy agreement and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on August 6, 2010. Mail receipt numbers were provided in the Landlord's evidence. The Tenant confirmed receipt of the hearing package and the Landlord's evidence.

The Landlords and the Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony was the parties entered into a written fixed term tenancy commencing August 4, 2009 and set to expire on August 31, 2010. Both parties confirmed they initialled section 2 (b) (ii) of the tenancy agreement which stipulates the tenant must move out of the residential unit at the end of the tenancy. Rent is payable on the first of each month in the amount of \$350.00 and the Tenant paid a security deposit of \$175.00 on July 29, 2009.

The Landlords testified and confirmed they are seeking an Order of Possession effective August 31, 2010, at 1:00 p.m. in accordance with their fixed term tenancy agreement. They referred to their evidence which included a copy of the June 1, 2010 letter issued to the Tenant providing notice that the Tenant was required to vacate the unit on August 31, 2010. The Tenant responded to the Landlord, in writing, on June 2, 2010, stating that he was refusing to vacate the rental unit.

The Tenant testified that he initialled section 2 (b) (ii) of the tenancy agreement and argued that when signing this document he had a verbal agreement with the Landlord that if he did not break any clauses of the lease then his tenancy was renewable. While he admits to having a disagreement with the Administrator he did not break any clauses of the lease, therefore he feels his tenancy should be renewable. The Tenant then argued that prior to receiving the June 1, 2010 letter to end his tenancy he was issued a written notice of a rent increase effective September 2010 to September 2011 and that these notices are an implied intention of the Landlord to continue his tenancy.

The Landlord argued that they did not enter into a verbal agreement at the onset of the tenancy to renew this tenancy. What they inform new tenants is that their first year is a probation period which is why they enter a fixed term lease with the move out provision.

The Tenant provided a new service address as noted on the front page of this decision.

Analysis

All of the testimony and documentary evidence was carefully considered.

The evidence supports that the parties entered into a fixed term tenancy set to expire on August 31, 2010, at which time the Tenant would have to vacate the rental unit. Section 44 (b) of the *Residential Tenancy Act* (the Act) provides 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.

The Tenant argued that he had a verbal agreement with the Landlord that provided that his fixed term lease was renewable. The Landlord provided opposing testimony which stated that there was no verbal agreement rather the Landlord informed the Tenant that the first year lease was a probationary lease. In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise. Therefore I cannot find that there was a verbal agreement to renew the lease and so the lease expires in accordance with the written tenancy agreement and the Tenant must vacate the unit on August 31, 2010.

I do not accept the Tenant's argument that the Landlord created an implied extension to his tenancy agreement when a notice of rent increase was issued to the Tenant. Even though the notice of rent increase was issued prior to the Landlord issuing the June 1, 2010 letter informing the Tenant that his tenancy would end in accordance with his tenancy agreement. A party cannot renegotiate or extend a written tenancy agreement unilaterally or singularly; therefore the Landlord cannot make an implied waiver or extension by singularly issuing a notice of rent increase.

Section 55 (2)(c) of the Act provides that a landlord may request an Order of Possession of a rental unit if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term. Section 55(3) of the act states the Director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order. Therefore I approve the Landlord's request for an Order of Possession.

As the Landlord has been successful with their application, I hereby award recovery of the \$50.00 filing fee from the Tenant.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **August 31, 2010 at 1:00 p.m. after service on the Tenant**. This order must be served on the Respondent Tenant and may be filed in the Supreme Court and enforced as an order of that Court.

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$50.00**. The order must be served on the respondent Tenant and is enforceable through the Provincial Court as an order of that Court.

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: August 20, 2010.

Dispute Resolution Officer