

Decision

Dispute Codes:

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Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord seeking clarification of a specific tenancy agreement term in respect to whether the term was enforceable under the contract or the Act.

Both parties appeared and gave testimony.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether or not the term in the tenancy agreement stating that, at the end of the current fixed term, the parties were required to re-negotiate a subsequent fixed term, would be enforceable under the Act.

The burden of proof is on the landlord.

Background and Evidence

The landlord testified that the tenancy began on January 1, 2010 for a fixed term ending on December 31, 2010. The landlord testified that, in addition to the expiry date for the fixed term, there was also a term agreed to in the tenancy agreement that required the tenants to re-negotiate for a second fixed term if they intended to continue to reside in the rental unit. The tenancy agreement submitted into evidence indicated that the tenancy starts on 01/01/2010 and a check-mark is beside the line:

“b) for a fixed length of time: 12 months ending on: 31/12/2010

At the end of this fixed length of time : (please check one option, i or ii)

i) the tenancy may continue on a ~~month-to-month basis~~ or another fixed length of time (then continued in handwriting;) as agreed to by both parties”.

(Reproduced as written).

The landlord felt that the above agreed-upon term would function to bind the tenant to negotiating a subsequent fixed term instead of automatically converting to a month-to-month tenancy once the fixed term expired.

The tenant is not willing to alter the terms of the tenancy and is of the opinion that under the Act, the tenancy should automatically transform to a month-to-month tenancy unless the parties chose to agree to a new fixed-term tenancy agreement.

Section 13 (2) of the Act states that a tenancy agreement must comply with any requirements prescribed in the regulations and must set out the standard terms; correct legal names of the landlord and tenant; address of the rental unit; the date the tenancy agreement is entered into; the address for service and telephone number of the landlord. The agreement must also feature the agreed terms in respect of the following:

- (i) the date on which the tenancy starts;
- (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;
- (iii) if the tenancy is a fixed term tenancy,
 - (A) the date the tenancy ends, and
 - (B) whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date; (My emphasis)

The question is whether, in a situation where the fixed term does *not* require the tenant to move out and the parties agree by contract to be bound by a limitation that the tenancy may *only* continue with another fixed term, this term would then serve to prevent the tenancy from converting to a month-to-month tenancy as the Act provides.

Section 5 of the Act states that landlords and tenants may not avoid or contract out of this Act or the regulations and that any attempt to avoid or contract out of this Act or the regulations is of no effect. I find that the Act prevails over a tenancy agreement term.

I find under section 13 (2)(f)(iii)(B) of the Act there are only two options: Either the tenancy terminates at the end of the fixed term and the tenant must then vacate OR; it continues on a month to month basis or *if agreed upon*, another fixed term. (My emphasis).

I find as a fact that this landlord and tenant opted in their contract that the tenancy would continue beyond the date of the fixed term being that nothing in the agreement specifies that the tenancy completely terminates as of the expiry date. Although I also find that the parties have clearly agreed to negotiate for another fixed term, going so far

as to cross out the option of continuing the tenancy on a month-to-month basis, this does not function to eliminate the possibility that there may still be a continuation of the tenancy on a month-to-month basis. Should the agreed-upon negotiations for a mutually acceptable fixed term not be successful, there is nothing available under the law or contract that would trigger a valid ending to this tenancy. I find it follows that the tenancy would then continue and the only default option available for its continuation would be with a month-to-month tenancy.

Therefore, unless the contract had clearly provided that the tenancy agreement I completely ends with the tenant required to move out at the end of the fixed term, then as soon as the expiry date of the contract has passed, the tenancy remains in place and in the absence of a valid mutual agreement imposing a subsequent fixed term, then the same terms as originally agreed-upon would continue, except it would not feature a specified expiry date.

Accordingly, it was determined that unless the parties mutually agree on another specific fixed term, the Act provides that this tenancy will automatically convert to a month-to month tenancy.

Conclusion

Based on the terms of the tenancy agreement, I order that as the end of the fixed term draws near these parties are at liberty to renegotiate a second fixed term as mutually agreeable between them, failing which the agreement will convert to a month-to-month tenancy as prescribed by the Act.

Having clarified the terms of this tenancy, I order that the remainder of the landlord's application be dismissed including the request for reimbursement of the cost of filing.

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: December 2010.

Dispute Resolution Officer