

Decision

Dispute Codes:

OTC, OPC

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession to enforce compliance with a term of the tenancy agreement. The landlord and tenant are involved in a dispute over the tenant's right to remain in the unit past the date of the fixed term of the tenancy agreement.

Both parties attended and each gave affirmed testimony in turn.

Preliminary Issue

Preliminary Issue: Tenant's Request for Adjournment

Prior to the hearing date, the tenant initiated a written request for adjournment on the basis that the tenant's agent was scheduled for surgery that would make it impossible for her to attend on the day of the hearing. No evidence was submitted to support this. The landlord testified that no request was made to the landlord seeking an adjournment and the landlord did not agree that one should be granted.

Rule 6.1 of the Residential Tenancy Rules of Procedure states that the Residential Tenancy Branch will reschedule a dispute resolution proceeding if "*written consent from both the applicant and the respondent is received by the Residential Tenancy Branch before noon at least three (3) business days before the scheduled date for the dispute resolution proceeding.*"

In this instance, I find no indication that the Respondent had ever sought or received the required consent from the Applicant. In any case, the Residential Tenancy Rules of Procedure would always require that the Dispute Resolution Officer consider whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective and purpose]; 2) consider whether the adjournment is required to provide a fair opportunity for a party to

be heard, including whether a party had sufficient notice of the dispute resolution proceeding; 3) weigh the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and 4) assess the possible prejudice to each party.

I note that the issue at hand is whether or not the fixed term in the tenancy agreement stating that the tenancy ends on December 31, 2010 and the tenant must move out is valid. The landlord's application was made on November 19, 2010 and the hearing was scheduled for December 10, 2010, yet during this period no written argument nor other evidence had been submitted into evidence by the tenant. I find that adjourning these proceedings would not contribute to the resolution of the matter and would only serve to prejudice the Applicant.

Accordingly, I found that there was not sufficient justification under the Act and Rules of Procedure to support imposing an adjournment on the other party. The tenant's request for an adjournment was therefore denied and the hearing proceeded as scheduled.

Preliminary Matter

Request to Join This Application with One Scheduled to be Heard later

In regards to the parties' request that the hearing for two application files be amalgamated and heard together, despite being for different addresses, I found that because the issues, evidence and participants were identical, the two applications should be heard back-to-back. Accordingly, in the interest of convenience to the parties, each application was heard in sequence and separate decisions issued.

Issue(s) to be Decided

The landlord was seeking an order to compel the tenant to comply with the tenancy agreement by vacating the unit on December 31, 2010 pursuant to the tenancy agreement. The issue to be determined based on the testimony and the evidence is whether or not the fixed term of the tenancy agreement required the tenant to relinquish possession to the landlord at expiry thereby warranting an Order of Possession in favour of the landlord.

Background and Evidence

The landlord testified that the tenancy was a one-year fixed term beginning on January 1, 2010 and ending on December 31, 2010 with rent set at \$1,715.00. The landlord submitted a copy of the tenancy agreement into evidence showing that the parties had initialed beside the section that stated:

“ii) the tenancy ends and the tenant must move out of the residential unit. If you choose this option, both the landlord and the tenant must initial in the boxes to the right.”

The landlord stated that she had reason to believe that the tenant would not vacate the unit on December 31, 2010 as required under the agreement and was therefore seeking an order of possession effective on that date.

The tenant testified that the individual who initialed the term in the agreement on January 1, 2010, stating that the tenant must move out at the end of the tenancy, was not the duly authorized representative for the tenant.

The tenant also stated that, based on the previous practice during the course of this tenancy relationship, there was a reasonable expectation that the fixed term tenancy agreement would be replaced by another one-year fixed term, notwithstanding the specific term requiring the tenant to move out at expiry.

The landlord disagreed with the above and asked that the contract be enforced.

Analysis

Section 6 of the Act states that the rights, obligations and prohibitions established under this 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 6(3) states that a term of a tenancy agreement is not enforceable if

- (a) the term is inconsistent with this Act or the regulations,
- (b) the term is unconscionable, or
- (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

In this instance I find that there was no ambiguity and the contract was clear.

Section 44 of the Act outlines the circumstances by which a landlord can end the tenancy and states that a tenancy ends only 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;

- (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

(My emphasis)

I find that the Act permits the landlord to end the tenancy due to the expiry of the fixed term because it was specifically agreed to by the parties in the contract that the tenant would vacate the unit on December 31, 2010. I do not accept the landlord's argument that this term in the e tenancy agreement should not be enforced based on the premise that the person signing on behalf of the tenant was not duly authorized to commit the tenant to the terms in the agreement. This individual had signed prior fixed-term agreements on behalf of the tenant and this most recent agreement had been in effect for almost a year thus far, without any objections being raised.

Given the above and based on both the contract and the Act, I find that the landlord is entitled to an Order of Possession effective December 31, 2010.

Conclusion

I hereby grant the landlord an Order of possession effective 1:00 p.m. on December 31, 2010 at 1:00 p.m. The landlord is entitled to be compensated for the cost of filing this application and will retain \$50.00 from the security deposit being held on behalf of the tenant.

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