

Decision

Dispute Codes:

OPB, O, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord seeking to end the tenancy based on a term in the agreement stating that the fixed-term tenancy expires on April 30, 2011 and that the tenant must vacate the property on the expiry date.

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 landlord is entitled to an Order of Possession based on the fixed term in the tenancy agreement.

The burden of proof is on the landlord.

Background and Evidence

The landlord testified that the tenancy began on May 1, 2010 for a fixed term of one year ending on April 30, 2011. The landlord testified that the contract signed by the parties indicated that the tenant was to vacate at the end of the expiry of the fixed term. A copy of the agreement was in evidence.

The tenancy agreement in evidence stated that the tenancy would continue for a fixed length of time and would end on April 30, 2011. The provision goes on to state:

"At the end of this fixed length of time: (please check one)

i) the tenancy may continue on a month-to-month basis or

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 the boxes to the right."

Neither the landlord's nor the tenant's box had any initials shown. However, the landlord stated that it was clearly the intent of the parties to terminate the tenancy at the end of the fixed term and that the tenant was to vacate the unit at that time. The landlord pointed out that:

- the document was freely signed with the check-mark in place
- the tenant, being a professional realtor, was aware of the term in the contract
- communications between the parties show the tenant accepted the fixed term

The landlord felt that the agreed-upon term, even without the initials, would function to bind the tenant to vacate at the end of the fixed term instead of the tenancy automatically converting to a month-to-month tenancy once the fixed term expired. The landlord was seeking an Order of Possession based on the ending of the agreement on April 30, 2011.

Analysis

The tenant disputed that the parties agreed that the tenant would be required to vacate at the end of the fixed term. The tenant pointed out that this was the reason she did not initial the portion of the contract that required the tenant to vacate and terminate the tenancy once the fixed term expired. The tenant's position is that the tenancy would not terminate at the end of the fixed term, but would convert to a month-to-month tenancy.

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; the tenancy automatically continues on a month to month basis.

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 neither party initialed the portion of the contract to confirm that both agreed that the tenant would have to vacate at the end of the fixed term. I find that the contract itself contained a mandatory provision that the parties must initial their consent that the tenancy will terminate and the tenant must move out on the date of the fixed term's expiry. Therefore I find that there is nothing available under the law or the contract that would serve to trigger a valid ending to this tenancy. I find it follows that the tenancy would then continue and its continuation would be with 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 negotiate any mutual agreement they see fit to do. However, the current fixed term tenancy will automatically 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: April 2011.

Residential Tenancy Branch