

DECISION

Dispute Codes: OP O

Introduction

By application of June 8, 2011, the landlord seeks an Order of Possession to uphold the end of tenancy date, the date on which tenant must vacate the rental unit set by the fixed term rental agreement. The landlord also authorization to retain the security deposit in set off against unpaid rent.

Issues to be Decided

The application requires a decision on whether the tenant is overholding and whether the landlord is entitled to an Order of Possession in support of the end of the tenancy set by the rental agreement.

Background and Evidence

This tenancy began on June 1, 2010 under a fixed term rental agreement set to end on May 31, 2011 with the selected option that the tenancy concluded on that date rather than default to a month to month tenancy.

It is pertinent to note that this tenancy was the subject off a previous hearing in which the landlord was found to be solely responsible the cost of treating a bedbug infestation in the rental unit and the tenant was granted a monetary award.

The property manager gave evidence that the landlord had given him direction not to renew the existing tenancy. However, on the experience that the respondent had generally been an excellent tenant, it was proposed that the tenancy be extended if the tenant would share in the cost of the bedbug treatment and retire the additional monetary claim.

To that end, the parties negotiated and signed an "Extension of Current Lease" into which was written the tenant's agreement to the shared cost of the treatment and waiver of the monetary award granted in the previous hearing. The extension covers the period from June 1, 2011 to May 31, 2012.

The parties were satisfied with the agreement to the point at which the tenant had added, ".....even though I don't agree" as subtext to the portion she had initialled with respect to the cost sharing and award waiver. The tenant stated she had added those words as she felt there had been an element of injustice in making an extension of the tenancy contingent upon her giving up the award granted by the previous hearing.

On reflection, the property manager had a change of heart and sought to have the extension agreement rewritten to clean it up and presumably omit the tenant's phrase, "I don't agree" among other things. The tenant declined, leading to the landlord's application.

Analysis

I find the extension agreement is binding, and that I cannot grant an Order of Possession to uphold the end of tenancy date of May 31, 2011 set by the original agreement as the tenancy is now governed by the extension to the agreement.

The landlord concurred that the phrase in question was on the extension document when he initialled it, correcting an error in the address and dollar amount of the award to the tenant to be waived.

I find that it was then available to him to stroke out that phrase and send the document back to the tenant for her acceptance. He did not do so and I find that he cannot change his mind after the fact.

The request to apply the security deposit is moot as the tenancy is continuing and the tenant has paid the rent for June 2011 although the landlord has yet to deposit the cheque.

Conclusion

The request for an Order of Possession is denied and the request to apply the security deposit to unpaid rent is dismissed as moot.

June 29, 2011