



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant DRI
 Landlord O

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession based on the Tenant's Notice to End the Tenancy.

The Tenant filed to dispute a rent increase.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on October 14, 2011, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord were done by personal delivery on September 28, 2011, in accordance with section 89 of the Act.

Both parties confirmed that they received the other party's hearing package.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to an Order of Possession?

Tenant:

1. Is the rent increase valid?

Background and Evidence

This tenancy started on July 1, 2009 as a month to month tenancy. Rent is \$1,342.00 at the present time, but before the removal of the rent subsidy the Tenant's subsidized rent was \$534.00. The Tenant paid a security deposit of \$671.00 on July 21, 2009.

The Tenant's Advocate said the Tenant was unable to attend the hearing and she has authorization the Advocate to represent the Tenant and give testimony on the Tenant's behalf. The Tenant's Advocate said the Tenant is disputing the removal of the rent subsidy as they believe it to be a rent increase that is incorrect and the clause in the tenancy agreement that refers to the removal of the rent subsidy for a breach of a material term of the tenancy agreement is unconscionable. The Tenant's Advocate presented that the clause in the tenancy agreement is unconscionable so the Landlord could not rely on it to remove the subsidy for a breach of a material term of the tenancy agreement. If this is the case then the rent could not be increase to an amount that the Tenant cannot pay and the Landlord could not use it as a means of ending the tenancy. The Tenant's Advocate said the Landlord uses this technique to end tenancies without issuing Notices to End Tenancy. The Advocate said this is unconscionable and it constitutes an invalid rent increase.

The Tenant's Advocate continued to say that the Tenant did give her written notice on August 31, 2011, to end of tenancy on September 30, 2011, but she did so with misinformation and incorrect facts about her ability to dispute the Landlord's actions. The Tenant's Advocate said the Tenant was told she could not dispute the loss of the rent subsidy and breach of the material term clause in the tenancy agreement and therefore she gave the Landlord a notice to end the tenancy. The Advocate continued to say the Tenant revoked her notice to end tenancy in writing on September 30, 2011. The Tenant's Advocate said the Tenant's notice to end tenancy should be disregarded because the Tenant can dispute the loss of rent subsidy and the breach of a material term of the tenancy clause in the tenancy agreement.

The Landlord said they are requesting an Order of possession based on the Tenant's written notice to end tenancy dated August 31, 2011 which they accepted and confirmed in a letter dated September 30, 2011, which was written prior to receiving the Tenant's letter revoking her notice to end tenancy. The Landlord's letter of September 30, 2011 confirms the receipt of the Tenant's letter giving notice to end the tenancy on September 30, 2011 and it offers the Tenant the opportunity to sign a mutual end of tenancy which would extend the Tenant time in the rental unit by 2 months to assist her in finding alternative housing. The Landlord said the end of the tenancy was mutual and in writing from both parties and now the Tenant will not move and she has two additional people living in the rental unit. The Landlord continued to say that the Tenant

did receive 3 Breach Letters and did not correct the breach which was housing a pet in the rental unit. Consequently the Landlord removed the rent subsidy due to a breach of the tenancy agreement. The Landlord requested an Order of Possession with an effective vacancy date for 2 months from the hearing date, based only on the Tenant's notice to end tenancy.

Analysis

The Tenant's application is based on the contention that the clause in the tenancy is unconscionable and therefore invalidates the removal of the rent subsidy and the end of the tenancy. The clause says the Landlord and the Tenant agree the material terms in the tenancy agreement are reasonable and a breach of any part of this agreement will constitute grounds to withdraw the subsidy and to end the tenancy as set out in the Act. It is the Tenant's Advocates contention that the clause is too general and is oppressive and therefore unenforceable. As the Tenant was not at the hearing it is unknown if the Tenant understood or did not understand the clause in the tenancy agreement. What is known is that the Tenant did breach the tenancy agreement by having pets in the rental unit and she did not correct the breach when she received the breach letters. I find the Landlord acted responsibly in issuing the breach letters. In reviewing the clause in the tenancy agreement I find it in plain sight and it is easy to read. As well the rent subsidy is not under the jurisdiction of the Residential Tenancy Act therefore it is not material to my decision. Consequently there is no rent increase as the rent is stated in the tenancy agreement as \$1,342.00 and the present rent is \$1,342.00. I dismiss the Tenant's application to dispute a rent increase.

The Tenant lost the rent subsidy but she did not get a notice to end the tenancy from the Landlord. The Tenant was the party that ended the tenancy with her notice to end tenancy dated August 31, 2011. Since the Landlord accepted the notice to end the tenancy before receiving the Tenant retraction of the notice to end tenancy I find the tenancy was deemed to be ended on September 30, 2011. The end of tenancy and acceptance of the end of tenancy are both in writing and constitute a mutual agreement to end the tenancy. Section 45 and 52 outline how a tenant can end a tenancy.

Section 45 of the Act says (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

and (4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Section 52 says in order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

It is apparent from both the Landlord and the Tenant's Advocate's testimony that the Tenant did give proper notice to end tenancy on August 31, 2011 with an effective vacancy date of September 30, 2011. As well the Landlord accepted that notice to end tenancy in writing September 30, 2011 prior to receiving the Tenant's letter revoking the notice to end tenancy. Consequently I find the Tenant's notice to end tenancy is valid and I award the Landlord an Order of Possession with an effective vacancy date of December 31, 2011.



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Conclusion

I find that the landlord is entitled to an Order of Possession effective **December 31, 2011**, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

The Tenant's application is dismissed without leave to reapply.

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*.

Residential Tenancy Branch