



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant confirmed that he received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on October 5, 2011. I am satisfied that the landlord served this package to the tenant in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an end to this tenancy and an Order of Possession? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy originally commenced as a month-to-month tenancy for rental of a manufactured home and pad site on January 1, 2010. The most recent tenancy was for a fixed term tenancy commencing on March 16, 2011. Monthly rent is set at \$418.00.

In the Residential Tenancy Agreement (the Agreement) that the parties signed on March 16, 2011, the landlord's representative (JF) and the tenant initialled their understanding that "At the end of this fixed length of time:...(ii) the tenancy ends and the tenant must move out of the residential unit. If you choose this option, both the landlord and tenant must initial in the boxes to the right." The end of the fixed term Agreement was identified as September 30, 2011. The Agreement was entered into written evidence by the landlord.

The landlord applied for an Order of Possession pursuant to sections 44(1)(b) and 55 of the *Act* because the landlord maintained that the tenant had breached the above agreement with the landlord by refusing to vacate by September 30, 2011.

The tenant entered oral and written evidence that he felt coerced into signing the March 16, 2011 Agreement. The tenant described the process leading up to his eventual signing of the Agreement as one of harassment directed towards him by the landlord's

property caretaker, ML. He said that he signed this Agreement on the landlord's fourth attempt to obtain his signature to the Agreement. He said that he did not know what was in the Agreement and did not "go over" the Agreement. He said that he relied on the oral assurance of the landlord's representative, JF, that nothing had changed in the Agreement and that the tenant could stay there for at least another year.

Landlord representatives' ML and JF disagreed with the statements attributed to them by the tenant. JF said that he made no assurance that the tenant could remain for any period beyond September 30, 2011. He also testified that he spent 45 minutes with the tenant going over the Agreement in considerable detail and answering any questions the tenant had. This oral testimony reinforced written evidence from JF. His only admission in oral and written evidence was that he told the tenant that he was unaware of any development plans at that time for this property. As stated in JF's written evidence, he maintained that at no time did he try to coerce the tenant into "signing a tenancy agreement without him knowing the terms of the tenancy." Landlord representative ML also denied coercing or harassing the tenant.

In his oral and written evidence, the tenant maintained that the Agreement was of no effect because the landlord did not comply with Section 15 of that Agreement requiring the landlord to "give the tenant a copy of this agreement promptly, and in any event within 21 days of entering into the agreement." The tenant testified that he did not receive a copy of the Agreement from the landlord, nor was he aware of the end date for his tenancy, until the landlord's representative provided him a copy of the Agreement on September 23, 2011, a week before the scheduled end date for this tenancy. Landlord representative JF testified that he left a copy of the Agreement in the tenant's mailbox in the week following the tenant's signing of the Agreement on March 16, 2011.

Analysis

Section 44(1)(b) of the *Act* reads in part as follows:

44(1) A tenancy ends only if one or more of the following applies:

(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;...

Although there was conflicting oral and written evidence provided by the parties regarding the tenant's understanding of the Agreement, I find that there is little question that the tenant initialled the section of the Agreement in which he confirmed that he would end this tenancy by September 30, 2011. By doing so, I find that the tenant committed to end this tenancy by that date. If the tenant did not read the Agreement presented to him for signing and neither read nor understood the section of that

Agreement that he initialled, he did so at his own peril. I find that the tenant has not provided sufficient evidence to convince me to disregard the terms of the Agreement he signed and initialled on March 16, 2011. I find that the landlord has sufficient grounds to obtain an end to this tenancy on the basis of section 44(1)(b) of the *Act* and to issue the landlord an Order of Possession.

I find that the tenant's claim that he was not provided a copy of the Agreement would constitute a technical breach of that Agreement. However, I find that this type of breach would not represent a breach of a material term of that Agreement. The technical breach of the Agreement would not void the contract established in the Agreement. In coming to this conclusion, it is not necessary for me to decide which of the parties provided accurate information regarding the date when a copy of the Agreement was provided to the tenant. However, I note that the parties provided very different sworn testimony as to the date the tenant was provided with a copy of the Agreement.

As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee for this application from the tenant.

Conclusion

I provide the landlord a formal copy of an Order of Possession to take effect by 1:00 p.m. on November 14, 2011. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I also issue a monetary Order in the landlord's favour in the amount of \$50.00 to allow the landlord to recover the filing fee for this application from the tenant. The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court. 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: November 01, 2011

Residential Tenancy Branch