



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession.

The hearing was conducted via teleconference and was attended by the landlords and their agent and both tenants.

During the hearing I determined it was essential to the matters before me that I have a copy of the tenancy agreement, however neither party provided a copy in their evidence. With the permission of the respondent tenants I had the landlord fax a copy to my attention at the close of the hearing.

Upon receipt of the fax from the landlord that was entitled: "Additional Terms and Conditions of the Lease" I was concerned that the landlord had failed to provide me with a copy of the entire tenancy agreement. Administrative staff of the Residential Tenancy Branch (RTB) contacted the landlord who confirmed this one page document was the entire tenancy agreement. I have attached a copy of the document to this decision as I have relied upon it in my decision.

During the hearing I provided an opportunity to the parties to come to their own resolution. The tenants stated they would move out by December 31, 2011 if the landlord provided compensation in an amount equivalent to one month's rent. The landlord declined the opportunity to settle with any compensation to the tenants.

Issue(s) to be Decided

The issue to be decided is whether the landlords are entitled to an order of possession, pursuant to Sections 44 and 55 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began on November 15, 2010 for a monthly rent of \$1,200.00 due on the 1st of each month with a security deposit of \$600.00 paid. The landlord asserts the tenancy was a month to month tenancy that required renewal each year. The landlord explained that they would obtain 12 months worth of rent cheques from the tenants for each renewal and the anniversary date was November 15, 2011.

The tenants testified that they believe they had a 12 month fixed term tenancy that converted to a month to month tenancy at the end of the fixed term.

The landlords provided into evidence the following relevant documents:

- A copy of a letter dated October 15, 2011 from the landlord to the tenants advising them: “we will not be renewing your lease at [dispute address]. Consider this letter the required written notice to vacate the premises by December 31, 2011.” The letter goes on to offer the tenants a reimbursement of any full month of unused rent;
- A copy of an email dated October 24, 2011 from the tenants to the landlords stating they have received the landlord’s letter and that they will move out effective November 15, 2011. The email goes on to say the tenants expect the landlord to provide compensation as is required when a landlord ends a tenancy for their own use; and
- A copy of a letter dated October 26, 2011 from the landlords to the tenants acknowledging receipt of the tenants notice that they will vacate the unit by November 15, 2011 and that they would not provide compensation to the tenants because they did not use Form RTB 32: 2 Month Notice to End Tenancy for Landlord’s Use of Property.

The landlord contends that in essence the chain of correspondence listed above equates to a mutual agreement to end tenancy as allowed for under Section 44 of the *Act* and as such seek an order of possession based on a mutual agreement.

The tenants assert the landlord is seeking to end the tenancy for personal use and as such they provided their response to the landlord in the email noted above with that understanding. The tenants acknowledge that one concern for them when they went to move was the condition of the new unit they had found but that they were also concerned about giving the landlord inadequate notice to end the tenancy.

Analysis

Section 13 of the *Act* outlines the requirements for tenancy agreements. As the landlord has assured that the document submitted is the full tenancy agreement I note that document has **none** of the terms required by the *Act* to be considered a tenancy agreement.

Specifically Section 13(f)(iii) requires that if the tenancy is a fixed term tenancy, the tenancy agreement must include the date the tenancy ends and whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date.

As these terms are not outlined in the tenancy agreement submitted I find the tenancy was not a fixed term tenancy. As such I find the landlord does not have the ability to

“renew the lease” as outlined in the letter dated October 15, 2011. Further, I find this letter to be an invalid notice to end tenancy issued by the landlord that does not comply with the form and content requirements of Section 52.

Section 52 requires that when a landlord issues a notice to end tenancy it must state the grounds for ending the tenancy, which must fall under Sections 46 (unpaid rent), 47 (cause), 48 (end of employment), or 49 (landlord's use of property) and be given in the approved form. The approved form is determined by which Section of the *Act* the landlord is seeking to end the tenancy under.

I find the tenants clearly thought the landlord's reasons to end the tenancy were for the landlord's use and as such invoked their right under Section 50 to end the tenancy earlier than the effective date of a landlord's use of property (Section 49) notice to end tenancy and under Section 51 to compensation for being issued such a notice.

While the landlord points to their letter of October 26, 2011 as the “mutual agreement” that they accept the tenants will move out on November 15, 2011 clearly there was not agreement to the terms for ending the tenancy, on the tenants' part, as the landlord had not agreed to the tenants demands for compensation and there is no follow up correspondence confirming the tenants agree to end the tenancy under these apparent final terms of the landlord.

Until such time as all components of an agreement are agreed upon a contract does not have consensus and without consensus an agreement cannot be enforced. Even during this hearing the parties could not reach a mutual agreement to terms that would end the tenancy.

Conclusion

For the reasons noted above, I find the landlord is not entitled to an order of possession and the tenancy remains in full force and effect.

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 08, 2011.

Residential Tenancy Branch