



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI , O, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for an order to extend the tenancy agreement beyond the fixed term end date, with no increase in rent if the tenancy agreement is extended, and for recovery of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Is the Tenant entitled to have an extension to the tenancy agreement beyond the fixed term end date, and if so is the Tenant entitled to have no rent increase?

Is the Tenant entitled to a monetary order for the filing fee?

Background and Evidence

The Tenant submitted a copy of the tenancy agreement as evidence in advance of the hearing. The tenancy agreement states that the rent is \$2800.00 per month due on the first of each month. The Tenant states that she rents the upper part of a house from the Landlord. The tenancy agreement states that the tenancy commenced on February 01, 2011 and is for a fixed term to end on January 31, 2012. The tenancy agreement contains no clause for the tenancy agreement to extend on a month to month basis after it expires, rather it states, "fixed term ending on January 31, 2012. At the end of this time the tenancy is ended and the tenant must vacate the rental unit. The tenant must vacate the premises before 1 PM on January 31, 2012 unless otherwise agreed to in writing by the landlord and tenant." The Landlord underlined the end dates in the tenancy agreement and the Tenant initialled below the fixed term clause and has signed the tenancy agreement as well.

The Tenant agrees that the tenancy agreement contains a fixed term, however, she states no Notice has been served on her by the Landlord, and she feels she is entitled

to at least two month's written notice from the Landlord. The Tenant stated that she is not ready to move out by January 31, 2012 and that she has been waiting for the Landlord to extend her tenancy. The Tenant submitted copies of emails as evidence of her attempts to negotiate an extension to the tenancy with the Landlord. The Tenant stated that the Landlord ignored her initial email in November 2011 requesting an extension to the tenancy. The Tenant stated that the Landlord did not respond to her until the end of December with an email stating that the lease governs the contract and that the Landlord offered to extend the tenancy by one month, and no more if the Tenant would agree to pay \$3400.00 for that extra month, otherwise the lease ends on January 31, 2012 and the Tenant must vacate the rental unit. The Landlord's email to the Tenant states that if an agreement were reached it would need to be put in writing and that the Tenant only had until January 01, 2012 to decide. The Tenant's emails in response stated that she needs to extend the tenancy for at least six months and would not agree to a higher rent. The parties did not reach an agreement, and the Tenant's closing emails to the Landlord indicated that she was going to the Residential Tenancy Branch to get a ruling on her case. The Tenant's position is that because the Landlord had negotiations with her about the possibility of extending her tenancy, this means she is entitled to an extension to her tenancy despite what the tenancy agreement states as the end date.

The Landlord's position is that as there was no agreement made with the Tenant and no extension was put in writing. The Landlord stated that she advised the Tenant that she must vacate the rental unit on January 31, 2012, as stated in the tenancy agreement. The Landlord would like a formal order of possession granted, however, the Landlord has not filed an Application for this with our office.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 13 (2) (f) of the Act states that a tenancy agreement must contain the following details:

13 (2) (f) the agreed terms in respect of the following:

- (i) the date on which the tenancy starts;
- (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;
- (iii) if the tenancy is a fixed term tenancy,
 - (A) the date the tenancy ends, and

(B) 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;

Section 44 of the Act states how a tenancy ends. Section 44 (1) (b) of the Act states:

- 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;

I find that the tenancy agreement is clear in its terms and that the fixed term agreement was made in compliance with section 13 (2) (f) (iii) of the Act. As a result, the Landlord is not required to serve the Tenant with a Notice to end the tenancy. I reject the Tenant's arguments about negotiations with the Landlord equating to any entitlement to extend the tenancy. I do not find that the parties reached any agreement to renew or extend the tenancy beyond the fixed term end date of January 31, 2012. I find that section 44 (1) (b) of the Act applies and that the Tenant must vacate the rental unit on the date specified in the tenancy agreement. The Tenant must vacate the rental unit on or before January 31, 2012 at 1:00 P.M.

I do not find that any rent increase is currently in effect, so I decline to make an order with regards to this matter. The Tenant's application is dismissed. As the Tenant was not successful in her Application I decline to award her the filing fee.

Should the Tenant fail to vacate the rental unit as required by the tenancy agreement, then the Landlord has recourse under the Act. The Landlord has liberty to apply for an order of possession if the Tenant fails to vacate the rental unit on January 31, 2012, and may seek monetary compensation from the Tenant for losses incurred as a result.

Conclusion

The Tenant's application is dismissed.

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: January 17, 2012.

Residential Tenancy Branch