



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MNR, FF

Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for the tenant's breach of an agreement with the landlord; a Monetary Order for unpaid rent; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony through their respective translator. They were given a full opportunity to be heard, to present evidence and to make submissions.

At the outset the landlord stated that the tenants paid rent; accordingly the landlord withdrew her application for a monetary order.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a single detached home. Pursuant to a written agreement, the fixed term tenancy started on August 1st, 2008 and was to end on January 31st,

2012. The rent was \$2300.00 per month and the tenants paid a security deposit of \$1150.00.

A hearing was previously convened on December 14, 2011, wherein the Dispute Resolution Officer dismissed the tenants' application to cancel a notice to end tenancy and granted the landlord an Order of Possession for use of the property. The tenants applied for a review and as a result, a new hearing was convened on January 23, 2012, wherein the Dispute Resolution Officer set aside the decision and Order of Possession granted to the landlord on December 14, 2011, and ordered that the tenants may discontinue the 2 Month Notice to End Tenancy and that the tenancy remain in full force and effect.

This brings us to this dispute where the landlord has applied for an Order of Possession for the tenants' breach of an agreement with the landlord. The landlord testified that the tenancy agreement was signed and initialled by tenant K.R that the tenant must move out of the unit on January 31st, 2012. The landlord stated that staying beyond that date is a breach of the agreement.

Tenant K.R. testified that she did not initial the box on the agreement concerning moving out at the end of the fixed term, and accused the landlord of forging her initials.

The landlord argued that he obtained the agreement initialled by the tenant on July 28th, 2011. The tenant argued that this never took place.

The parties' testimony is at complete odds and they would not agree to resolve this dispute informally. While examining the tenants' documentary evidence, I noted that the tenants provided a copy of a previous tenancy agreement, showing that the these parties entered into fixed term agreements since 2007, and that at that time the tenants had initialled their agreement to move out at the end of each fixed term which was subsequently renewed. This observation was raised with the tenants, with the notion in obtaining an explanation as to why, since the parties properly completed and initialled a

fixed term agreement since 2007, they did not raise a concern with this tenancy if they did not agree to move out at the end of the tenancy, and why they waited until the landlord filed an application for dispute resolution to address the issue.. The tenant explained that their understanding was limited, and that they believed that they could continue to stay in the rental unit.

Analysis

As explained to the tenants during the hearing, even if I accepted that they did not initial the box where they agreed to move out, it does not remove the fact that they received from the landlord a fixed term agreement, and that based on a tenancy that started in 2007, I find it incomprehensible that they did not understand the landlord's intent after signing 5 previous agreements under the same terms. I cannot accept the language barrier as a reasonable excuse; if anything their understanding ought to improve with time and therefore the absence of initials in a box becomes a mere oversight. Given their tenancy history, I am satisfied that the tenants knew that they were entering into a fixed term agreement as they did in the past with this landlord. Upon seeing the landlord's initials, I find that the tenants ought to have clarified in advance whether or not they could stay at the end of the fixed term, and to seek remedy forthwith. I find that in the circumstances, knowing the possible ramifications associated with a fixed term agreement, the tenants ought to have been more diligent rather than simply relying in the absence of their initials to secure their right to stay beyond the end of the fixed term. Therefore I find that this tenancy ended on January 31st, 2012, whether or not the tenants placed their initials in the appropriate box.

Conclusion

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant.

This Order may be filed in the Supreme Court of British Columbia and enforced as an Order 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: February 13, 2012.

Residential Tenancy Branch