



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

FF, OPB, O

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession based on the mutual agreement between the parties that was signed by the landlord and the tenant on January 27, 2012 to end the tenancy effective February 29, 2012.

Both parties appeared at the hearing and gave evidence.

Issue(s) to be Decided

The issue to be decided at this hearing is whether or not the landlord is entitled to receive an Order of Possession based on the mutual agreement signed by the parties.

Background and Evidence

The tenancy began on August 19, 2011 and the rent is \$375.00. A security deposit of \$425.00 was paid. The landlord testified that the parties had signed a Mutual Agreement to End Tenancy ending the tenancy on February 29, 2012. A copy of the Notice was in evidence. The landlord testified that, despite signing the agreement, the tenant was refusing to vacate the unit and the landlord was seeking an order based on the mutual agreement to end the tenancy.

The tenant testified that he had unwillingly signed the agreement under duress. The tenant testified that the landlord had forced him to sign the agreement by threatening to enter his room at will.

The landlord denied that the tenant was pressured into signing the agreement. The landlord acknowledged that payment of rent for March was accepted and testified that the tenant was never cautioned by the landlord that the payment was being accepted "for use and occupancy only" and that the payment did not function to reinstate the tenancy.

Analysis

Section 55 (2) states that A landlord may request an order of possession of a rental unit by making an application for dispute resolution in situations where the landlord and tenant have agreed in writing that the tenancy is ended.

Section 52 of the Act states that, 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.

I find that the mutual agreement has successfully met all of the required criteria and would therefore be an enforceable agreement under the Act.

I also do not accept the tenant's position that the contract should be set aside based on testimony that he was forced to sign the agreement against his will.

However, I find that there may have been a reinstatement of this tenancy based on the fact that the tenant paid rent for the month of March 2012 which was accepted by the landlord, without the landlord first clarifying that, notwithstanding the fact that the rent was being accepted, the agreement to end the tenancy would still stand.

A landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. With the consent of the party to whom it is given, but only with his or her consent, a Notice to End Tenancy may be withdrawn or abandoned prior to its effective date.

However, a Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, by the express or implied consent of both parties.

The question of waiver usually arises when the landlord has accepted rent or money payment from the tenant, after the Notice to End has been given. If any rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End, then no question of "waiver" can arise because the landlord is validly entitled to rental payments during the tenancy.

On the other hand, if the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue.

Intent can be established by evidence as to:

- whether the receipt shows the money was received “*for use and occupation only*”.
- whether the landlord specifically informed the tenant that the money would be for use and occupation only.
- the conduct of the parties

In the case before me, the landlord evidently accepted payment of rent after the effective date terminating the tenancy but failed to inform the tenant that the tenancy was not being reinstated and that funds were being accepted for “use and occupancy only”.

For this reason, I find that the tenancy was reinstated after the parties had signed the Mutual Agreement to End Tenancy and as such the landlord’s request for an Order of Possession based on the Mutual Agreement must be dismissed.

Conclusion

I hereby dismiss the landlord’s application 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*.

Dated: April 04, 2012.

Residential Tenancy Branch