



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O

Introduction

This hearing was scheduled to hear a landlord's application for a decision as to whether the tenancy will come to an end and the tenant will be required to vacate the rental unit pursuant to the fixed term tenancy agreement. Both parties were represented by agents at the hearing. Both parties 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

Does the tenancy end and is the tenant required to vacate the rental unit at the end of the fixed term?

Background and Evidence

The landlord prepared a tenancy agreement using the tenancy agreement provided by the Residential Tenancy Branch. Section 2 of the tenancy agreement provides for the length of tenancy. Both parties are in agreement that the fixed term tenancy was set to commence April 1, 2011 and expire March 31, 2012. The dispute revolves around what is to happen at the end of the fixed term.

The tenancy agreement produced by the Residential Tenancy Branch provides space for parties to choose one of two options where a fixed term tenancy is agreed upon. Below I have reproduced the relevant area of the tenancy agreement:

At the end of this fixed length of time: *(please check one option, i or ii)*

- ☐ i) the tenancy may continue on a month-to-month basis or another 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.

Adjacent to option ii) are boxes for the landlord and tenant to initial if they chose option ii).

The following information was undisputed by the parties:

- On March 7, 2011 the landlord sent a tenancy agreement to the tenant via email for her signature. In section 2 of the tenancy agreement sent to the tenant the landlord had ticked option i)
- The tenant returned the tenancy agreement to the landlord via facsimile on March 15, 2012. The tenant had signed the agreement and in section 2 the tenant initialled the box adjacent option ii). Option i) remained ticked and unaltered.
- The landlord signed the agreement March 21, 2011 and mailed it back to the tenant. The landlord emailed the tenant advising her that he had mailed the agreement to her. He also told her to call him if she had any questions or concerns. There was no further communication between the parties with respect to the end of the fixed term until December 2011.
- On December 5, 2011 the landlord sent the tenant a reminder to supply him with three more rent cheques for January through March 2012 and a Notice of Rent Increase (to be effective April 1, 2012) via email.
- On December 5, 2011 the tenant responded to the landlord's email by thanking him for the reminder about the cheques and informing the landlord the kitchen faucet was loose and there was tub caulking was mouldy.
- On December 7, 2011 the landlord informed the tenant that the Notice of Rent Increase was invalid since the tenant had "initialled" the box that provides that the tenancy would end and the tenant would have to vacate the rental unit at the end of the fixed term.
- In February 2012 there was a flood in the rental unit and the landlord took the position the tenant was responsible for damage caused to the rental unit and making repairs to the unit. The landlord issued a 1 Month Notice to End Tenancy for Cause dated March 30, 2012 which the tenant received April 3, 2012 and filed to dispute the Notice on April 11, 2012 (file no. 790077). At the time of filing this application, the hearing set for file no. 79007 had not commenced.

The parties were in dispute with respect to the content of section 2 of the tenancy agreement executed by the parties. Below I have summarized the parties' respective positions:

The landlord submitted that after receiving the tenancy agreement from the tenant March 15, 2011 he not only signed page 6 but he also ticked the box and initialled the space corresponding to option ii). After making these alteration he mailed a copy of this agreement back to the tenant and she did not make any enquires as to this change.

The landlord submitted that it his general practice to continue with a tenancy on a month-to-month basis after a fixed term tenancy has expired. However, with this tenancy, the landlord has conducted himself on the basis the tenant had wanted this tenancy to end upon the expiry of the fixed term as she indicated by initialling option ii).

The tenant submitted that the tenancy agreement returned to her by the landlord was signed on page 6 by the landlord but that the only box ticked corresponded to option i). Nor did the landlord initial the space corresponding to option ii) on the agreement that he mailed back to her.

It was the tenants' submission that in completing the tenancy agreement she did not want the tenancy to end at the expiry of the fixed term. Rather, she initialled box adjacent to option ii), erroneously believing that she was confirming the choice indicated by box i).

Both parties provided me with copies of different versions of the tenancy agreement. On page 2 of the landlord's version both boxes are ticked indicating that at the end of the fixed term the tenancy would continue and the tenancy would end and the tenant would have to vacate. On the tenant's version the only box ticked is that indicating the tenancy would continue.

Analysis

After reviewing all versions of the tenancy agreements provided for my review, I find, on the balance of probabilities, that the tenancy agreement executed by the parties is the version supplied as evidence by the tenant. Below I have provided reasons for my finding.

The tenant's version contains the landlord's signature on page 6 and all six pages are date and time stamped by the fax machine used on March 15, 2011. I note that the date and time stamps are sequential and immediately consecutive. As it is the

recipient's copy of faxed pages that bear the date and time stamps of a fax machine I find no other probable explanation as to why the tenant's copy bears the date and time stamp of the fax machine along with the landlord's signature.

I further note that in his email to the tenant on December 7, 2011 he refers to her "initials" appearing next to option ii) but he makes no reference to box ii) being ticked or the presence of his initials adjacent to option ii).

Finally, a document altered after it is signed by a party is not indicative of the agreement of the parties and most often that term is not enforceable. That is to say that even if the landlord altered the tenancy agreement by ticking and initialling option ii) this would have been done after the tenant already signed the agreement. Thus, he altered the agreement after she signed it and in the absence that such an alteration was with the agreement of the tenant I find the alteration to be of no effect.

Based on the forgoing, I reject the landlord's version of the tenancy agreement and I proceed to make a determination as to what is to happen at the end of the fixed term based upon the tenant's version of the tenancy agreement.

Section 6(3) of the Act requires that in order for a term in a tenancy agreement to be enforceable it must be expressed in a manner that clearly communicates the rights and obligations under it. I find that the tenant's initials appearing in the space adjacent to option ii) do not clearly communicate that the tenancy would end on the expiration date of the fixed term since option i) is also ticked. Therefore, I find there is not a clear indication or an enforceable term that the tenant is required to vacate the rental unit at the end of the fixed term.

Further to the above, section 44(3) of the Act provides that if the tenancy agreement does not require the tenant to vacate the rental unit on the expiry date of a fixed term, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Having found the tenancy agreement does not clearly indicate the tenancy will end and the tenant will have to vacate the rental unit on the expiry date of the fixed term then, pursuant to section 44(3) of the Act, I find that this tenancy continues on a month to month basis upon expiry of fixed term.

Conclusion

Upon expiry of the fixed term, the tenancy continues on a month-to-month basis.

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: May 24, 2012.

Residential Tenancy Branch