

## **Decision**

### **Dispute Codes:**

OTC, OPC, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession to enforce compliance with the fixed term that had been agreed upon by the parties and documented in the tenancy agreement. The landlord is seeking to end the tenancy because the tenant has remained in the unit beyond the expiry date of the fixed term of the tenancy agreement and is refusing to vacate in accordance with the agreement. The landlord is also seeking monetary compensation for damages incurred that were caused by the tenant.

Despite being served in person on May 3, 2012, the respondent did not appear.

### **Preliminary Matter**

#### **Monetary Claim**

In addition to seeking compliance with the fixed term provision in the tenancy agreement, the landlord's application also included a distinct request for monetary compensation for damages and loss caused by the actions of the tenant.

The Residential Tenancy Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the dispute resolution officer determines that it is appropriate to do so, the officer may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

In this instance, I found that the landlord's monetary claim pertained to a separate and distinct section of the Act and was not related to enforcement of specific terms of the tenancy agreement in regard to terminating the tenancy.

Accordingly, I find that the monetary portion of the landlord's application should be severed and the monetary matters must be dealt with through an application under section 67 of the Act. Therefore the portion of the application dealing with the landlord's request for a monetary order is dismissed with leave to reapply.

### **Issue(s) to be Decided**

The landlord was seeking an order to compel the tenant to comply with the tenancy agreement by vacating the unit on April 30, 2012 pursuant to the fixed term agreed-upon by all parties to the tenancy agreement.

The issue to be determined based on the testimony and the evidence is whether or not the fixed term of the tenancy agreement required the tenant to relinquish possession to the landlord at expiry thereby warranting an Order of Possession to the landlord.

### **Background and Evidence**

The landlord testified that the tenancy was a three-month fixed term beginning on February 1, 2012 and ending on April 30, 2012. The landlord submitted into evidence a copy of the tenancy agreement signed by the parties verifying that the tenant had agreed to move out of the rental unit on the expiry date. The parties had also initialed beside the section of the contract that stated:

*“ii) the tenancy ends and the tenant must move out of the residential unit. If you choose this option, both the landlord and the tenant must initial in the boxes to the right.”*

The landlord testified that the tenant has not moved out as required and the landlord is seeking an Order of Possession for the end of May 2012.

### **Analysis**

Section 6 of the Act states that the rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement and that a landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) *[determining disputes]*.

Section 6(3) states that a term of a tenancy agreement is not enforceable if

- (a) the term is inconsistent with this Act or the regulations,
- (b) the term is unconscionable, or
- (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

In this instance I find that there was no ambiguity and the contract was clear.

Section 44 of the Act outlines the circumstances by which a landlord can end the tenancy and states that a tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 [*tenant's notice*];
- (ii) section 46 [*landlord's notice: non-payment of rent*];
- (iii) section 47 [*landlord's notice: cause*];
- (iv) section 48 [*landlord's notice: end of employment*];
- (v) section 49 [*landlord's notice: landlord's use of property*];
- (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
- (vii) section 50 [*tenant may end tenancy early*];

(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;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended

(My emphasis)

I find that the Act permits the landlord to end the tenancy due to the expiry of the fixed term because it was specifically agreed to by the parties in the contract that the tenant would vacate the unit on April 30, 2012.

Given the above and based on both the contract and the Act, I find that the landlord is entitled to an Order of Possession effective May 31, 2012.

## **Conclusion**

I hereby grant the landlord an Order of possession effective 1:00 p.m. on May 31, 2012 at 1:00 p.m. The landlord is entitled to be compensated for the cost of filing this application and will retain \$50.00 from the security deposit being held on behalf of the tenant.

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.

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Residential Tenancy Branch