



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, FF

Introduction

This hearing was convened by way of conference call in repose to the landlord's application for other issues and to recover the filing fee from the tenants for the cost of this application.

One of the tenants and the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the effective date of the fixed term tenancy agreement?

Background and Evidence

The parties agree that this tenancy originally started on November 24, 2011 for a four month fixed term. At the end of that term the parties entered into a new tenancy agreement for a second fixed term of five months ending on September 01, 2012. Rent for this unit is \$1,000.00 per month and is due on the first of each month.

The landlord testifies that the reason he entered into another fixed term tenancy was because he was having problems with the tenants' dogs and wanted to give the tenants the opportunity to rectify these issues within a five month fixed term period. The landlord testifies that the tenants and landlord had both initialled the boxes on the tenancy agreement that state:

At the end of the fixed length of time the tenancy ends and the tenant must move out of the rental unit. If this option is chosen both the landlord and tenant must initial in the boxes to the right.

The landlord testifies that the tenant and landlord did initial these boxes and the tenant was aware the tenancy would end on September 01, 2012. The landlord testifies that had the tenants rectified the issues over their dogs the landlord would have extended the tenancy or entered into another fixed term period if both parties agreed to do so. As the tenants did not rectify the dog issues the landlord wants the tenancy agreement to be upheld and therefore seeks an Order of Possession for September 01, 2012 in the event the tenants fail to move from the unit by this date.

The tenant disputes the landlord's claims. The tenant agrees that he had initialled the box where indicated by the landlord to say the tenancy would end but states the landlord had not checked the box at the beginning of the paragraph which identifies this term of the agreement. The tenant testifies that they were not aware that their tenancy would be ending on September 01, 2012 until the landlord served the tenants with the hearing documents.

The tenant testifies that the landlord did not provide the tenants with a copy of the tenancy agreement until the landlord served the tenants with the hearing documents. The tenant testifies that when he did initial the box he asked the landlord if the landlord wanted the tenants to move out of the unit in five months because the tenant states they would have to have time to find somewhere else that would take their animals. The

tenant states that he thinks the landlord did not provide a copy of the lease because the landlord had checked the box after the tenants had signed the lease.

The landlord disputes the tenant's claims and states he believes he had given the tenants a copy of this lease agreement. The landlord testifies that the tenants were fully aware of the terms of the lease before they signed the tenancy agreement as the landlord states he had asked the tenants to read and initial that section of the tenancy agreement.

Analysis

When tenants' enter a fixed term tenancy agreement with a landlord and the tenants sign that agreement, the tenants are agreeing to the terms of that agreement. The tenancy agreement has also been initialled by the landlord and a tenant on the section concerning the date the tenancy will end and that the tenants must move out by that date.

The tenant attending argues that the landlord had not checked the box concerning that section of the agreement and the landlord must have checked the box after the tenants had signed the agreement. The landlord contradicts this and states the box was checked and the tenants were told to read and initial that section of the agreement before signing the agreement.

When it becomes one persons word against that of the other then the burden of proof is not met with regards to the tenants claim that the landlord checked this box after the agreement was signed. In any event the tenant agrees he did initial this section of the agreement and in doing so the tenants have agreed to move from the rental unit by September 01, 2012. Consequently the landlord is entitled to an Order of Possession for September 01, 2012 in the event the tenants do not move out on this date.

With regards to the landlords application to recover the \$50.00 filing fee for this proceeding; I am not satisfied that the landlord is entitled to recover the filing fee as the landlords claim was filed on July 16, 2012 one and a half months before the tenancy ends. The landlord did not disclose any evidence to show that the tenants are refusing to move out by September 01, 2012. Therefore it is my decision that the landlord must bear the cost of the filing fee.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on September 01, 2012 by 1.00 p.m. This order must be served on the Respondents and may be filed in the Supreme Court 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: August 07, 2012.

Residential Tenancy Branch