



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OP and FF

Introduction

This hearing was convened on applications by both the landlord and the tenant.

By application of November 14, 2012, the landlord sought an Order of Possession pursuant to the end of tenancy date set by the fixed term rental agreement. The landlord also sought to recover the filing fee for this proceeding.

By application of November 21, 2012, the tenants contest the landlord's request for the Order of Possession.

Issue(s) to be Decided

This matter requires a decision on whether the end of tenancy date set by the rental agreement is enforceable and qualifies for an Order of Possession.

Background and Evidence

This tenancy began on December 1, 2011. Rent is \$1,500 per month and the landlord holds a security deposit of \$750 paid at the beginning of the tenancy.

During the hearing, the landlord submitted into evidence a copy of a fixed term rental agreement which indicates it was signed by the parties on November 1, 2011 with an end of tenancy date of November 30, 2012 at which time, the agreement states, the tenants were to move out of the rental unit.

The landlord also submitted copy of a letter to the tenants dated October 27, 2012 reminding the tenants of the expiry date and imminent end of the tenancy.

The tenants gave evidence that they had never signed the lease in question but had only signed a blank sheet as the landlord was having difficulty printing the agreement from her computer and stated she would provide a copy to the tenants later. The tenants said that, at the time, it was their understanding and intention that the agreement would become a month to month tenancy at the end of the fixed term.

The copy of the agreement submitted into evidence bore a signed and witnessed notation on the back side of the last page that the agreement was delivered to the tenants on October 29, 2012, two days short of a year after it was signed.

The tenants also submitted into evidence a copy of a decision dated April 16, 2012 from a previous hearing conducted on April 11 and April 13, 2012.

In recording the evidence submitted into that hearing, the Dispute Resolution Officer (DRO) reported that:

“The landlord also testified that no written tenancy agreement exists, and when asked during cross examination if the tenants were told that a 6 month lease was required by the strata, the landlord disagreed and stated that the tenants were just told to fill in a form, and denied that any lease or tenancy agreement was ever signed by the parties.”

In her analysis of the evidence , the DRO reiterated that, “The landlord was insistent in testimony that the parties did not sign a tenancy agreement.....”

I must note also that, in her review of evidence, the DRO reported that:

The tenant also testified that a lease was signed at the outset of the tenancy which included a term that the tenants would pay \$20.00 per month for a pet damage deposit for 2 dogs, but the tenants did not receive a copy.

The landlord explained the discrepancy as a matter of forgetfulness due some confusion at the time.

In her analysis of the declared existence or non-existence of a rental agreement by the parties, the DRO concluded that, "...a tenancy agreement exists whether or not it is put in writing, and if not in writing, the agreement contains standard terms."

Analysis

As the landlord seeks the Order of Possession, the burden of proving the fidelity of the rental agreement falls to the landlord.

Given the landlord's sworn testimony in the previous hearing that there was no rental agreement and in view of its denial by the tenants, I must conclude that the landlord has failed to prove the veracity of the agreement signed on November 1, 2011.

I find that the tenancy is governed by the standard terms and it is, at present, a month to month tenancy. Therefore, I decline to issue an Order of Possession on the basis of the fixed term agreement which I find to be unenforceable.

Conclusion

The landlord's application is dismissed without leave to reapply and the tenancy continues.

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: December 14, 2012.

Residential Tenancy Branch