



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPB, FF

Introduction

This application was brought by the landlord seeking an Order of Possession pursuant to a fixed term in the tenancy agreement. The landlord is also seeking payment of rent for the period during which the tenant has been over-holding.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Only the evidence and testimony relevant and material to the issues under dispute and the findings in this matter are described in this decision

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession based on the expiry of the fixed term in the tenancy agreement?
- Is the landlord entitled to payment of rent for the period during which the tenant has been occupying the rental unit, past the expiry date of the fixed term.

Background and Evidence

The landlord submitted into evidence a copy of the Tenancy Agreement signed by the landlord and one of the co-tenants on October 11, 2012. The agreement was for a fixed term starting on November 1, 2013 and running for three months with the expiry date of date shown as January 31, 2013.

The tenancy agreement provides that:

“At the end of this fixed length of time:

ii) the tenancy ends and the tenant must move out of the residential unit.”

A notation on the tenancy form indicates:

“If you choose this option, both the landlord and the tenant must initial the boxes to the right”

The landlord's initials and the tenant's initials are handwritten in the appropriate boxes labeled, *“Landlord's Initials”* and *“Tenant's Initials”*.

The landlord was asked about the addendum to the tenancy agreement, which was not submitted with the landlord's evidence.

The landlord acknowledged that this portion of the agreement was not placed in evidence. The tenant was permitted to read the additional terms contained on the addendum into evidence.

The landlord testified that a note was sent to the tenant on January 4, 2013, reminding the tenant that the tenant's move out date under the contract was on or before the expiry date of January 31, 2013. The landlord testified that the tenant advised the landlord that they did not intend to move. The landlord is seeking an order of possession reflecting the effective expiry date of January 31, 2013 that was agreed to in the tenancy agreement.

The tenant disputed the landlord's application. The tenant testified that, she did initial the tenancy agreement at the spot where it states that, *“ii) the tenancy ends and the tenant must move out of the residential unit”*, but pointed out that, when she initialed this part of the agreement, there was no checkmark shown beside the statement that *“the tenancy ends and the tenant must move out of the residential unit”*.

The tenant's position is that the fixed term in the tenancy agreement is not enforceable because:

- she had unwittingly placed her initials in the box agreeing to move out, without being aware that this three-month fixed term required that the tenant vacate the rental unit on the expiry date shown,
- although she did initial in the box for the tenant's initials, the second initial shown on the tenancy agreement beside hers, was not that of her co-tenant and was fraudulently placed there by the landlord,
- the landlord violated the Act by not giving the tenant a copy of the tenancy agreement within 21 days of signing it, as required under the Act,

- the landlord had verbally agreed to extend the tenancy to a month-to-month tenancy and the tenancy therefore should have reverted to a month-to-month agreement after the fixed term expiry date,
- the landlord had asked the tenant to vacate, giving, as a reason, the fact that that the unit would be used to house the landlord's relatives,
- the tenant had received a text message from the landlord consenting to the tenant's request to remain in possession of the unit past the expiry date,
- the landlord had committed multiple violations of the Residential Tenancy Act with respect to the tenancy terms and the landlord's actions in locking the laundry room, restricting the tenant from services and facilities that were part of the tenancy,
- The landlord refused the tenant's payment of rent for the month of February 2013.

The landlord disputed all of the tenant's testimony with respect to the above, but did acknowledge refusing payment of rent for the month of February 2013 on the basis that the landlord considered the tenancy to be at an end as of January 31, 2013.

Analysis

Based on the evidence and the testimony of both parties, I find that the tenancy agreement is for a fixed term ending on January 31, 2013 and that the tenant and landlord agreed that the tenant would be required to move out of the rental unit on the expiry date of the fixed term.

With respect to the tenant's argument that alleged violations of the agreement and the Act committed by the landlord would function to totally nullify the written agreement, and make the fixed-term not enforceable, I find that the fixed term portion of the tenancy agreement and other terms in the agreement remain enforceable. I find that the written tenancy agreement is valid, despite allegations that either party had failed to otherwise comply with various other tenancy terms or sections of the Act.

A mediated discussion ensued during the hearing and the parties set the date for the final termination of this tenancy by mutual agreement. The date that the tenancy will end is February 28, 2013.

Accordingly, I hereby grant the landlord an Order of Possession effective February 28, 2013 as agreed by the parties. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

As the dispute was resolved by mutual agreement, I decline to award the landlord the cost of filing this application.

In regard to the landlord's monetary claim for \$900.00 rent owed for the month of February 2013, I accept that the tenant did attempt to pay the rent for February and still intends to pay this rent. The landlord's request for a monetary order is therefore dismissed with leave to reapply, should the tenant fail to fulfill this obligation.

Conclusion

The landlord is granted an Order of Possession on a date set by mutual consent and the monetary claim is dismissed with 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: February 05, 2013

Residential Tenancy Branch