



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, FF

Introduction

This hearing was scheduled to deal with the landlord's application for an Order of Possession based upon a breach of an agreement with the landlord. Both parties appeared or were represented at the hearing and 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.

At the commencement of the proceeding, I heard that the tenant had since vacated the rental unit and I was satisfied that an Order of Possession was no longer required. The landlord indicated that he wished to pursue recovery of the filing fee paid for this application. I proceeded to hear from the parties in considering this request.

Issue(s) to be Decided

Have the landlords established that the tenant's actions necessitated the filing of this Application?

Background and Evidence

It was undisputed that the parties signed a written tenancy agreement on August 10, 2012 and that the tenant moved into the rental unit in mid-August without any requirement to pay rent for those days in August 2012. The written tenancy agreement indicates the tenancy started August 1, 2012 and was to continue for a fixed term of "seven months" at which time the tenant would have to vacate the rental unit. The expiry date that appeared on the tenancy agreement when the tenant signed it was under dispute.

Both parties provided a copy of the same tenancy agreement. The expiry date appears to read have read March 1, 2013 at one time and then it was altered to read March 31, 2013.

The tenant stated the tenancy agreement that she signed indicated the end of the fixed term was March 1, 2013 and the landlords altered it after she signed it to state March 31, 2013. The tenant submitted she did not receive a copy of the tenancy agreement until March 4, 2013 when the end of tenancy became an issue.

The landlord stated that when the parties met to sign the tenancy agreement the tenant requested the expiry date be changed to March 31, 2013. The landlords agreed to the change and reflected the change on the tenancy agreement. The landlords made a copy of the agreement shortly after it was signed by the parties and the tenant was given a copy.

The landlords were of the position that whether the tenancy was set to end March 1, 2013 or March 31, 2013 the tenant was required to vacate the rental unit. As the tenant indicated that she would not be vacating the rental unit in early March 2013 the landlords filed this application.

The tenant submitted that she did not read the tenancy agreement terms when she signed the tenancy agreement and was unaware that she had to vacate the rental unit at the end of the fixed term, despite her initials in the box adjacent to the term. As the fixed term was set to expire March 1, 2013 and she had paid rent for March 2013 she considered the tenancy to have continued on a month to month basis. Only after she paid rent for March 2013 did the landlords inform her that the tenancy was ending March 31, 2013. Then they provided her with a copy of the altered tenancy agreement.

Analysis

Section 72 of the Act provides that I, as a delegated authority of the Director, may order one party to pay the other party all or part of the filing fee paid for the Application. Such an award is at the discretion of the Arbitrator hearing the dispute. I have considered the following factors in deciding whether to order the tenant to pay the landlord for the cost of the filing fee.

The Act places a burden upon the landlord to prepare a tenancy agreement that complies with the requirements of the Act and reflects the terms the parties agreed upon. To be enforceable, a term of a tenancy agreement must be expressed in a manner that clearly conveys the rights and obligations under the term. Further, any change to a term of a tenancy agreement must be by agreement of both parties.

At issue in this case was whether the fixed term expiry date was changed to read March 31, 2013 with the tenant's agreement. I find the different version of events presented to me to be equally probable which is why I suggested to the parties that any changes to a term, or part of a term, be initialled by both parties or otherwise acknowledged in writing by both parties so that the agreement to the amendment is clear.

I find the start date of the tenancy was not accurately recorded in the tenancy agreement by the landlord and the fixed term of seven months does not, on its face, reconcile to the expiry date of March 31, 2013. Given these discrepancies, I find the landlords' inaccuracies at least partly contributed to this dispute.

I also find the tenant at least partly responsible for this dispute as she failed to read and understand the terms of the tenancy agreement she signed.

In light of the above, I find both parties contributed to this dispute; however, I find the tenant likely suffered the greatest expense since she had to absorb the costs of moving. Therefore, deny the landlords' request for recovery of the filing fee and I order the landlord to absorb the cost of the filing fee paid for this application in recognition of the landlords' contribution to this dispute.

Conclusion

The tenancy has ended and an Order of Possession is no longer required. I make no award for recovery of the filing fee and, as such, the cost of this Application shall be absorbed by the landlords.

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: April 04, 2013

Residential Tenancy Branch