



Dispute Resolution Services

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*Residential Tenancy Branch
Office of Housing and Construction Standards*

DECISION

Dispute Codes: OPB FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act for an Order of Possession pursuant to Sections 44, and 55 as the tenant has breached a term of the fixed term tenancy agreement by saying he will not vacate as agreed; and an order to recover the filing fee pursuant to Section 72.

SERVICE:

Both parties attended and the tenant agreed he received personally the Application for r Dispute Resolution. I find that the tenant was properly served with the documents according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

The tenant signed a fixed term tenancy agreement dated September 1, 2013 to expire in 8 months on March 31, 2014. The tenant refuses to vacate. Is the landlord now entitled to an Order of Possession?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced in June 2012 for a fixed term one year lease that expired on May 31, 2013. The landlord said at that time the tenants asked for an extension to August 31, 2013 because their movie business was moving to Toronto and the tenants gave him a Notice to End Tenancy for August 31, 2013. However, they then informed him that they needed a new 8 month lease because they were in the middle of a movie so they signed the present lease expiring on March 31, 2014. The tenants do not want to move out although they initialled box 3, option ii) agreeing to vacate.

The tenant contended the most recent lease is a forgery. He said he recalls a piece of paper extending the previous lease until September 2013 but there was no lease signed. He said there had been some dispute about heating problems but they had been resolved. He invited me to examine the previous one year lease and the present

one submitted as evidence and look at signs of forgery such as the date 2014. He said he cannot move until July as he is shooting a movie.

The landlord said the tenant's evidence is false. He sat at the kitchen table with the two of them and they all signed the lease and the male tenant initialled box 3 ii).

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Order of Possession

Section 44(1)(b) of the Act provides that a fixed term tenancy ends when both parties agree that the tenancy ends at the end of the fixed term. I find that the landlord is entitled to an Order of Possession effective March 31, 2014 which is the agreed end of the lease term and the vacancy date. While the tenant contended the second lease was a forgery, I find the landlord's evidence more credible that he required a second lease and they all signed it. This is supported by the undisputed fact that the tenancy commenced with a fixed term one year lease with box 3 ii) initialled by the parties providing for vacancy at the end of the lease. It was also undisputed that the landlord gave them in writing an extension to September 2013 and the landlord said he got a Notice to End Tenancy from them also which assured him of vacant possession. I find it improbable that he would have allowed the tenancy to continue without a written lease providing for vacant possession as he had been diligent on this for the past two years.

Furthermore, I carefully examined the two leases in evidence and I find no evidence of forgery or any deception by the landlord. The signatures appear to be the same and no numbers are changed, they are crisp and readable.

Conclusion:

I find the landlord is entitled to an Order of Possession effective March 31, 2014 and to recover filing fees paid for this application. The filing fee of \$50 may be recovered by deducting it from the tenant's security deposit which will leave \$800 security deposit in trust for 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*.

March 11, 2014

Residential Tenancy Branch