



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: O, FF, OPT

Introduction

This hearing dealt with applications by the landlord and the tenant pursuant to the *Residential Tenancy Act*. Both parties applied for “other” and the landlord applied for the recovery of the filing fee. The tenant also applied for an order of possession. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Did the parties enter into a fixed term tenancy that required the tenant to move out at the end of the fixed term?

Background and Evidence

The tenancy started on December 01, 2012 for a fixed term of 13 months. A copy of the tenancy agreement was filed into evidence. On that agreement the tenant initialled the term that states that on January 01, 2014, the tenancy ends and the tenant must move out of the residential unit. Beside the date of January 01, 2014, another date is handwritten. This date is April 30, 2014.

The tenant testified that the landlord verbally agreed to an extension of six months which would allow the tenancy to continue until June 30, 2014. The landlord denied having agreed to allow the tenancy to continue until June 30 and stated that he agreed to an extension up to April 30, 2014. I attempted to assist the parties to agree on a date that the tenancy would end. The tenant was not willing to agree to an end date prior to June 30, 2014.

Analysis

Section 44 (1) (b) of the *Residential Tenancy Act* states that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy.

By initialing the term in the tenancy agreement regarding the end of tenancy, the tenant agreed that the tenancy was a fixed term tenancy that would end on the last day of the fixed term and that the tenant was required to move out on that day. Based on the signed tenancy agreement and the testimony of both parties, I find that the tenancy was a fixed term tenancy which ended on January 01, 2014.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case both parties provided conflicting testimony on the date the tenancy was extended to. The date on the agreement is April 30, 2014. In the absence of any documentation to support his testimony of a verbal agreement regarding the end of tenancy as June 30, 2014, I must accept the end date as written in the tenancy agreement which is April 30, 2014.

Therefore the tenancy must end on this date and the landlord is entitled to an order of possession. The landlord agreed to allow the tenant to occupy the unit until May 30, 2014. Pursuant to section 55(2); I am issuing a formal order of possession effective on or before 1:00 p.m. on May 30, 2014. The Order may be filed in the Supreme Court for enforcement. The landlord has proven his case and is therefore entitled to the recovery of the filing fee. The landlord may retain \$50.00 from the security deposit.

Conclusion

I grant the landlord an order of possession effective **May 30, 2014**. The landlord may retain \$50.00 from the security deposit. The tenant's application is dismissed.

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 23, 2014

Residential Tenancy Branch

