



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Regency Investments Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB

Introduction

This hearing dealt with an application by the landlord for an order of possession.

Both the landlord and tenants attended the teleconference hearing and gave affirmed evidence. The landlord was assisted by an agent, and the tenants were assisted by an advocate.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

The landlord gave evidence that the tenants all signed a fixed term tenancy agreement which requires them to vacate the rental unit effective August 31, 2014. The tenancy agreement was not put into evidence, however each of the parties had copies before them during the hearing (which they described to the arbitrator).

The landlord's evidence is that they prepared a tenancy agreement for all six tenants to sign, by modifying template #RTB-1 (from the RTB website) to create a tenancy agreement with enough boxes for all the tenants' names and boxes for them to initial. The landlord's evidence is that the landlord and all six tenants signed the tenancy agreement on June 1, 2014. The landlord says that in section 2 of the tenancy agreement, "Length of Tenancy", box "b)" is checked to indicate a fixed length of time, and the box after the words "ending on" specifies "August 31, 2014". The landlord says that under the words "At the end of this fixed length of time", option "ii)" is checked to indicate the tenancy ends and the tenants must move out. The landlord says that each of the tenants initialled a box in this section to indicate agreement with option "ii)". The landlord seeks an order of possession based on the tenancy agreement.

The tenants dispute that they agreed to move out at the end of the fixed term. Their evidence is that they were told at the time they signed the tenancy agreement that it would continue on a month-to-month basis. The tenants' evidence is that there was no tick beside option "ii)" when they signed, however they agree they initialled the boxes in that section. The tenants say they were not given a copy of the tenancy agreement until weeks after they signed it. When they received a copy, there was a tick beside option "ii)". The tenants' position is that any benefit of the doubt should go to the tenants.

The landlord says that he formerly rented the rental unit to a tenant "JM". JM then entered into sub-tenancy agreements with various people to rent rooms in the rental unit. JM entered into sub-tenancy agreements with at least two of the current tenants. The landlord evicted JM, and he anticipated her sub-tenants would also leave the rental unit. However the sub-tenants appealed to him that they had nowhere to go. He says he provided them with a three-month tenancy to give them time to find other places. However, his evidence is that he and his son were very careful to ensure that it was a limited term tenancy. That is why he is 100% certain option "ii)" was ticked at the time of signing.

The landlord's son noted that the only reason the tenants' and landlord's initials would be present in section 2 would be to confirm that the tenants must move out at the end of the fixed term. The tenant's advocate says that initials are often present in section 2, whether option i) or ii) is chosen.

Four of the tenants gave evidence. Tenant SH said he has been living at the rental unit for about nine months but previously dealt with another landlord, JM. His evidence is that he entered into a tenancy agreement with JM in September or October 2013 and believes it was a month-to-month tenancy. He says there were others living in the rental unit, and JM entered into separate agreements with them. SH says the landlord in this application showed up on June 1, 2014 and asked the tenants to come outside one at a time and sign the tenancy agreement. SH says he remembers initialling the tenancy agreement but didn't realize he was agreeing to move out. He says the landlord told him he would renew the contract at the end of three months.

Tenant RP gave evidence that he moved into the rental unit on June 1, 2014 and signed the tenancy agreement that day. He says the landlord did not say anything to him about the length of the tenancy. He says that each tenant filled out a separate agreement. His evidence is that he signed in the first blank on a tenancy agreement which had no other signatures, however his signature appears in the fifth blank on the tenancy

agreement that the parties had before them during the hearing. RP has since moved out.

Tenant RT gave evidence that he moved into the rental unit in February 2014 and signed a tenancy agreement with JM, which he thinks was a month-to-month tenancy. He says the landlord in this application asked him to sign another tenancy agreement on June 1, 2014. His understanding was that the tenancy was for a three-month fixed term and would then go month-to-month. He says he read the entire tenancy agreement and option "ii)" was not checked at the time he signed it. He says he would not have signed it if the check mark was there.

Tenant BP gave evidence that she also moved into the rental unit in February 2014. She is not certain whether she signed a tenancy agreement; it may have only been an intent to rent. BP agrees she initialled the tenancy agreement, however her initials appear twice and she does not remember initialling it twice. Her evidence is that she specifically remembers that option "ii)" was not checked and none of them would have signed the agreement if it had been.

The landlord agrees that the tenants came outside to sign the tenancy agreement one at a time. He says there were several dogs in the rental unit and he is allergic. He says the tenant BP initialled the document twice. The landlord says he and his son were careful to ensure that each tenant initialled in section 2 to indicate agreement they would move out by August 31, 2014.

Analysis

The parties provided contradictory evidence regarding whether the tenants were verbally advised that they had to move out at the end of the fixed term tenancy, and whether option "ii)" was checked at the time of signing. Having listened to the evidence of the parties, I prefer the evidence of the landlord since I found his version of events to be more plausible. Also, I agree with the landlord that there would be no reason to obtain the tenants' initials in section 2 unless the agreement was that the tenants would move out at the end of the fixed term.

I was not convinced by the tenants' evidence that they would not have signed the tenancy agreement if they understood they would have to move out after three months. The tenants were already living in the rental unit at the time, and were likely aware that JM was no longer the head tenant. It is more likely that they would have chosen to solidify their status as tenants by signing a tenancy agreement, even if it was only for three months.

I find that the tenants did understand and agree that they had to move out at the end of the fixed term. For that reason, the landlord is entitled to an order of possession. I grant the landlord an order of possession which must be served on the tenants. Should the tenants fail to comply with the order, it may be filed for enforcement in the Supreme Court.

Conclusion

I grant the landlord an order of possession.

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: September 12, 2014

Residential Tenancy Branch

