



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

OPB, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession to enforce compliance with a term of the tenancy agreement. The landlord and tenant are involved in a dispute over the tenant's right to remain in the unit past the date of the fixed term shown on the tenancy agreement. The landlord is also requesting a monetary order for rent owed for additional occupants.

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 affirmed testimony and relevant evidence that was properly served.

Preliminary Matters

Although the landlord's application included a monetary claim under section 67 of the Act, in addition to the request for an order of possession based on the tenancy agreement, I find that the most pressing issue before me is the landlord's request to terminate the tenancy.

The Residential Tenancy Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the dispute resolution officer determines that it is appropriate to do so, the officer may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Accordingly, I dismiss the portion of the landlord's application relating to the monetary compensation and I do so with leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the tenancy agreement?

Background and Evidence

The landlord testified that the fixed term tenancy began on November 1, 2013 and was to expire on November 1, 2014. The landlord testified that the parties entered into a subsequent tenancy agreement in March 2014, in which both parties agreed to some changes in various tenancy terms. The landlord testified that the second contract still set the fixed term expiry date as November 1, 2014 and required that the tenant move out of the unit at the end of the fixed term. The landlord pointed out that the second contract included initials of the parties confirming these terms. A copy of both agreements had been placed in evidence.

The tenant stated that they did not want to vacate and believed that they had a right to stay beyond the expiry date shown on the tenancy agreement and have their tenancy revert to a month-to-month tenancy.

The landlord submitted a copy of the tenancy agreement into evidence showing that the parties had each initialed beside the section that stated:

“ii) the tenancy ends and the tenant must move out of the residential unit. If you choose this option, both the landlord and the tenant must initial in the boxes to the right.”

The landlord stated that, despite the expiry of the fixed term, the tenant had not vacated the unit and the landlord requests an order of possession.

Analysis

Section 6 of the Act states that the rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement and that a landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) [*determining disputes*].

Section 6(3) states that a term of a tenancy agreement is not enforceable if

- (a) the term is inconsistent with this Act or the regulations,
- (b) the term is unconscionable, or
- (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

In this instance I find that there is no ambiguity and the contract is clear. I also find that the term is consistent with the Act and is not unconscionable.

Section 44 of the Act outlines the circumstances by which a landlord can end the tenancy and states that a tenancy ends only if one or more of the following applies:

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 [*tenant's notice*];

- (ii) section 46 [*landlord's notice: non-payment of rent*];
- (iii) section 47 [*landlord's notice: cause*];
- (iv) section 48 [*landlord's notice: end of employment*];
- (v) section 49 [*landlord's notice: landlord's use of property*];
- (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
- (vii) section 50 [*tenant may end tenancy early*];

(b) 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;

(My emphasis)

- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended

I find that the Act permits the landlord to end the tenancy upon expiry of the fixed term, and this was specifically agreed to by both of these parties in the contract. Both parties agreed that that the tenant would vacate the unit on November 1, 2014.

Given the above, and based on both the contract and the Act, I find that the landlord was entitled to regain possession on November 1, 2014. Accordingly, I find that the landlord is now entitled to be granted an Order of Possession.

As the tenant has paid rent for the month of November, I hereby grant the landlord an Order of Possession effective November 30, 2014. This order must be served on the tenant and may be enforced through an application to the B.C. Supreme Court.

I also find that the landlord is entitled to be compensated for the cost of filing this application and order the landlord to retain \$50.00 from the security deposit being held on behalf of the tenant.

Conclusion

The landlord is successful in the application and is granted an Order of Possession based on the fixed term of the tenancy agreement. The landlord's monetary claim is severed and 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: November 18, 2014

