



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the Application) made by the Tenants for 'Other' issues and to recover the filing fee.

Both parties appeared for the hearing and the female Landlord and the male Tenant provided affirmed testimony. No issues in relation to the service of the Tenant's Application and the parties' documentary evidence were raised during the hearing.

At the start of the hearing, I asked the Tenants the reasons for their Application. The Tenants confirmed that they were seeking an extension of their tenancy agreement to the end of May 2015 from the Landlords.

Issue(s) to be Decided

Are the Tenants entitled to extension of the fixed term tenancy agreement?

Background and Evidence

The parties agreed that the Tenants started renting this property on November 1, 2003. Since this time the parties engaged into annual fixed term tenancies.

The most recent tenancy agreement between the parties was signed on October 22, 2014 and provided in written evidence. The tenancy agreement shows that rent is payable by the Tenants in the amount of \$1,500.00 on the first day of each month and that it is a fixed term tenancy of two months due to expire on December 31, 2014.

The tenancy agreement provides that at the end of the fixed term, the Tenants are required to vacate the rental suite and both parties initialed this provision of the tenancy agreement.

The Tenant testified that prior to them signing the current tenancy agreement, the Landlord had sold the property and had informed them that they could stay in the rental suite until the end of January, 2015.

However, the sale of the property fell through and now the Landlords have no reason not to grant an extension of their tenancy for the end of May, 2015. The Tenant explained that he was willing to work with the Landlords to ensure the tenancy continued successfully.

The Tenant explained that they have been long term Tenants and if they are forced to leave the rental suite they will incur unnecessary costs and this will impact the Tenant's medical treatment which is planned for the end of January, 2015. The Tenant asked that these factors should be considered in granting them an extension of their tenancy.

The Landlord rebutted the Tenant's testimony and submitted that they had undergone a lot of stress, anxiety, medical issues and financial loss themselves as a result of the Tenant's failing to leave the rental suite in accordance with the tenancy agreement.

The Landlord explained that the previous tenancy which expired at the end of October 2014 also required the Tenants to move out of the rental suite. However, the property sold in the middle of October, 2014 and the new owners requested possession for the start of December 2014. Out of consideration for the Tenants, the Landlords offered them another two month lease to give them sufficient time to vacate the rental suite.

The Landlord went on to explain that the Tenants had been offered another fixed term tenancy of one month to expire at the end of January 31, 2015. However, after multiple requests there was no response from the Tenants.

The Landlord explained that they were not willing to give the Tenants more time or mutually agree to end the tenancy. As a result, the Landlord made an oral request for an Order of Possession as the Tenants were now over holding the tenancy.

Analysis

Section 44(1) of the Act provides ways in which a tenancy may end. Section 44(1) (b) of the Act stipulates 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.

The tenancy agreement provided by both parties clearly shows that the Tenants signed the agreement and initialed the portion which requires the Tenants to vacate the rental suite on the end date of the fixed term period, in this case, December 31, 2014.

While I offered the Landlord and Tenant an opportunity to discuss a mutual agreement to end the tenancy, the Landlord did not want the tenancy to continue any further.

I informed the Tenant of the above provisions of the Act and explained that there is no authority under the Act to extend a tenancy agreement in these circumstances.

Furthermore, the Act also does not allow factors such as: the length of time a Tenant has residing in a rental suite; financial circumstances; and medical reasons, authority for me to extend the tenancy in the absence of any mutual agreement to do so.

Therefore, the Tenants' Application must fail. As the Tenants have failed in their Application, I dismiss their request to recover the filing fee from the Landlords.

The Landlord made an oral request for an Order of Possession during the hearing based on a breach by the Tenant of the tenancy agreement.

Section 55(1) of the Act enables a Landlord to make an oral request for an Order of Possession during a dispute resolution hearing. However, this oral request is **only** confined to an Application made by the Tenant to **cancel a notice to end tenancy** which is subsequently upheld and dismissed by an Arbitrator.

However, while Section 55(2) (c) of the Act does allow a Landlord to request an Order of Possession if the tenancy agreement is a fixed term tenancy and Tenant is required to vacate the rental suite at the end of the fixed term, this request can only be made by making an Application. An oral request cannot be granted under these circumstances.

Based on the foregoing provisions of the Act, I am unable to grant the Landlord an Order of Possession. However, the Landlord is at liberty to make an Application for an Order of Possession.

The Tenants are cautioned that the Landlords are able to recover any losses associated with the Tenant's over holding the tenancy.

Conclusion

For the above reasons, I dismiss the Tenants' Application **without** leave to re-apply.

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: January 07, 2015

Residential Tenancy Branch

