



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *O, FF*

Introduction

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

The landlord applied for an order of possession for the end date of the fixed term lease. The tenant applied for an order directing the landlord to provide services and facilities that formed part of the lease.

During the hearing, the tenant informed me that he had amended his application to include an application for an order directing the landlord to provide a new fixed term tenancy agreement with the same terms as the current one or in the alternative reduce the rent to compensate for the loss of a self-contained suite inside the rental home.

The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

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? Has the landlord taken away services and facilities that are included in the tenancy agreement?

Background and Evidence

The tenancy started on June 01, 2014 for a fixed term of one year. The monthly rent is \$3,200.00 payable on the first of each month. The rental unit consists of a home with a secondary self-contained suite. The tenant rents out this suite with the approval of the landlord.

A copy of the tenancy agreement was filed into evidence. Every page is initialled by both parties in the bottom right hand corner.

The agreement contains clauses that state the following:

It is understood that tenancy ends with the expiry of this lease agreement and the Tenant shall vacate the Premises by 1 p.m. on the 31st day of May, 2015

*Right to renew – The landlord agrees that provided that the Tenant duly and regularly pays their rent reserved by their Lease and observes and performs all covenants, conditions and agreements herein contained on the part of the Tenant to be observed and performed the Tenant may renew their lease for a further term of (to be determined) upon the same terms and conditions as contained herein EXCEPT for rent which shall first be agreed to in writing. The Tenant shall exercise the Tenant's right to renew hereunder by the giving of written notice of the Tenant's intention to renew to the Landlord at least **three (3) months** prior to the expiration of the Term. Tenant's failure to obtain written agreement of renewal or extension of this Lease from the Landlord, shall confirm end of tenancy at the expiry of the Lease.*

On March 03, 2015, the landlord served the tenant with a notice to inform the tenant that effective May 01, 2015, the secondary self- contained suite would be modified to remove appliances and would no longer be available for use as a secondary suite.

The landlord had received a notice from the local municipality to notify the landlord that the secondary suite was not legal and that the landlord had the option of legalizing the suite or removing the cooking and laundry facilities inside the secondary suite. Based on the cost of legalizing the suite, the landlord decided to have it removed. On March 03, 2015, the landlord informed the tenant that the suite would no longer be used as a suite effective May 01, 2015 and the tenant would receive a \$100.00 rent deduction.

The tenant did not agree and on March 10, 2015, he filed an application for dispute resolution to obtain an order directing the landlord to provide facilities that were included in the tenancy agreement.

On March 13, 2015, the landlord sent the tenant a letter by email regarding the end of the fixed term lease. The landlord attached a new lease and requested the tenant to sign the lease if he was interested in entering into another fixed term lease.

The new lease differed from the current lease regarding the facility of the secondary suite and the amount of rent payable. The tenant did not agree with the terms and let the landlord know that he would not be signing the lease.

On March 19, 2015, the landlord sent the tenant a letter informing the tenant that his lease would not be renewed and that he would have to move out on May 31, 2015 which is the end date of the fixed term.

The tenant amended his application for dispute resolution to include an application for an order directing the landlord to renew the lease on the same terms as the current lease or provide a \$1,000.00 rent deduction. The tenant arrived at this amount based on the income he received from the secondary suite.

The tenant stated that he contacted information officers who told him that he would not be required to move out because he had not put his initials beside the term that required him to move out at the end of the fixed term.

Attempts to mediate the matter were made without success. Towards the end of the hearing, the tenant indicated that he would sign the new lease as it was too difficult and inconvenient for him to move out on May 31, 2015. The agent for the landlord offered to let the owner know and indicated that she would get back to the tenant with the owner's reply.

Analysis

Section 13 of the *Residential Tenancy Act* addresses the requirements for tenancy agreements and states that if the tenancy is a fixed term tenancy, the agreement must state the date the tenancy ends and whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date.

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.

The tenant claimed that he was advised by an information officer, that since he had not initialed the term regarding having to move out at the end of tenancy, the tenancy would continue on the same terms after the end date of the fixed term.

The role of the information officer is to provide information, not advice as to the rights and obligations of landlords and tenants under the legislation. Information officers do not act as advocates and their role is not to dispense specific advice to landlords or to tenants.

Based on the signed tenancy agreement, the testimony of both parties and sections 13 and 44(1) of the *Act*, I find that the tenancy is a fixed term tenancy which will end on May 31, 2015 and a term in the tenancy agreement requires the tenant to move out on that date.

I further find that another term in the agreement confirms that tenant's failure to obtain written agreement of renewal or extension of this lease from the landlord, shall confirm end of tenancy at the expiry of the lease. On March 19, 2015, the landlord informed the tenant that the lease would not be renewed upon expiry on May 31, 2015.

Therefore the landlord is entitled to an order of possession effective on the last day of the fixed term. Pursuant to section 55(2); I am issuing a formal order of possession effective on or before 1:00 p.m. on May 31, 2015. The Order may be filed in the Supreme Court for enforcement.

The landlord applied for an order of possession prior to the end date of tenancy and therefore I find that her application is premature. Accordingly the landlord must bear the cost of filing her own application.

Tenant's application

Section 14 of the *Residential Tenancy Act* states that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if the landlord and tenant agree to the amendment. The requirement for agreement does not apply to a withdrawal of a service or facility.

In this case the landlord has given the tenant notice to remove the facility of the secondary suite. Since this suite was a service and facility provided to tenant in the tenancy agreement, I find that the landlord may not remove this service for the duration of the tenancy. Accordingly the tenant's application to continue to avail of the facility is granted.

I do not have the authority to provide direction to the landlord on how he chooses to structure his tenancy agreement for a future tenancy. Accordingly, the tenant's application for an order directing the landlord to renew the tenancy agreement under the same terms as the existing one or provide a \$1,000.00 rent rebate is dismissed.

The tenant has proven a portion of his case and is therefore entitled to the recovery of the filing fee. The tenant may make a one-time deduction of \$50.00 from a future rent.

Conclusion

I grant the landlord an order of possession effective on or before **1:00 p.m. on May 31, 2015**. The tenant may make a one-time deduction of \$50.00 from a future rent.

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 16, 2015

Residential Tenancy Branch

