



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, O, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the *Act*") for an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; another remedy or compensation under the *Act*; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord acknowledged receipt of the Tenant's Application for Dispute Resolution on April 17, 2015 by personal service. Tenant D testified that his application for another remedy under the *Act* was directly related to his claim for the landlord's compliance under the *Act* and no other issue.

Issues to be Decided

Are the tenants entitled to an order requiring the landlord to comply with the *Act*?
Are the tenants entitled to another remedy or compensation under the *Act*?
Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began on August 1, 2014 for a fixed term of one year. A copy of the residential tenancy agreement was submitted into evidence. The rental amount of \$2200.00 is payable on the first of each month. The landlord testified that they continue to hold a security deposit in the amount of \$1100.00 paid by the tenants on June 13, 2014.

The tenants applied for an order that the landlords comply with the *Residential Tenancy Act* and to recover their filing fee. They testified that their tenancy agreement included a right to renew. They submitted that the landlords had failed to allow them to exercise their right to renew the tenancy.

The tenancy agreement submitted into evidence states,

The Landlord agrees that provided that the tenant duly and regularly pays the rent reserved by this 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 this 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.

The landlord testified that, in accordance with this section of the tenancy agreement and the move-out clause at the first page of the tenancy agreement, the Landlord did not agree to a new tenancy term and sent a letter in accordance with the notice provisions to ensure that the tenants were aware that their tenancy would be ending at the conclusion of the fixed term of one year. The landlord testified that the tenants have not yet vacated the rental unit.

The move-out clause that the landlord refers to states, "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 July 2015."

The tenants testified that their tenant rights had been violated by the Landlord in not allowing them an opportunity to renew their lease. Tenant B testified that the move-out clause within the tenancy agreement does not trump the right to renew their lease. Tenant D testified that the tenants travel extensively from place to place and always ensure that they have the right to renew in case they decide to stay longer. Tenant D testified that they would not have entered this rental agreement if they had known it would end in one year.

Tenant D also testified that they have received no explanation as to why they cannot renew their tenancy from the landlords. He testified that the tenants believed they had a

deadline of April 30, 2015 to renew their agreement and the landlords circumvented the process by providing a letter declining to renew the tenancy for a further period of time. As part of their evidence, the tenants submitted a letter from the landlords dated April 7, 2015. That letter referred to the right to renew clause in the rental agreement and indicated that the landlords “will [not] be in a position to renew [the] lease after its expiry on 07/31/2015.” This letter also indicated that references would be provided, if required. The tenants testified that they had provided notice to the landlords on April 7, 2015, stating that the tenants intended to “renew the existing Lease Agreement for a further term.”

Analysis

There is no dispute between the parties that this tenancy began as a one year fixed term tenancy to end on July 31, 2015. Residential Tenancy Policy Guideline No. 30 provides direction on the definition and terms of a fixed term tenancy:

A fixed term tenancy is a tenancy where the landlord and tenant have agreed that the tenancy agreement will begin on a specified date and continue until a predetermined expiry date...

Section 44 of the *Act* addresses how a tenancy ends, including a fixed term tenancy:

44 (1) A tenancy ends only if one or more of the following applies:

(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...

Policy Guideline No. 30 also indicates that, a landlord and tenant may agree to renew a fixed term tenancy agreement with or without changes, for another fixed term. In accordance with the Act and the Policy Guidelines, the tenancy agreement signed by both parties in this matter states that

... Tenant **may** renew this lease for a further 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.

(emphasis added)

Tenant B submitted that the tenants have a right to renew their lease and that the right cannot be trumped by another clause in the agreement. The clause described by the tenant as a “right” to renew is an option that is available and for the protection of both

parties. In this form of tenancy, a term is fixed for the assurance of both parties. With few exceptions, this tenancy will continue to the end of its term, allowing the tenants and landlords the security that comes with this fixed period of time. This form of tenancy also schedules an end or expiration date with the option to renew if both parties agree to set a new term for the tenancy.

In this case, the landlords have not agreed to renew this rental agreement. Pursuant to the legislation, if a tenant does not obtain written agreement to renew their lease from the landlord, the tenancy will end at the expiry date on the original agreement. When the tenants and landlord signed the rental agreement for a term of one year, both parties agreed to all the terms within that agreement as long as they comply with the *Act*. Therefore, as the landlords have clearly stated that they have not agreed to renew the rental agreement, this agreement will end as of July 31, 2015.

I dismiss the tenant's application to have the landlord comply with the *Act*, finding that the landlords are in compliance with the *Act*. As the tenant has not been successful in this application, I do not find that they are entitled to recover their filing fee for this application.

Conclusion

I dismiss the tenant's application in its entirety.

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: June 11, 2015

Residential Tenancy Branch

