



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOGGAN ESTATES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FF

Introduction

This hearing was scheduled to deal with a tenant's application for orders for the landlord to comply with the Act, regulations or tenancy agreement. The originally scheduled hearing did not proceed due to an error on part of the Branch. The hearing was rescheduled and both parties were provided a Notice of Rescheduled Hearing. Both parties appeared or were represented at the rescheduled hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The tenants had identified several issues by way of their Application and multiple written submissions. I confirmed with both parties that the issues of utmost importance that needed resolution during this hearing was the fate of this tenancy and the landlord's restricted right to enter the rental unit. These issues have been dealt with by way of this proceeding and any other disputes that remain outstanding will have to be addressed by way of another application.

I heard that the tenants had sent their hearing package and evidence to the landlord via registered mail. The first registered mail package was returned to the tenants as unclaimed and the landlord explained that his service address is a post office box that he had not been checking frequently. The tenants sent the landlord a copy of the hearing documents and evidence via email which the landlord confirmed receiving and was agreeable to being deemed sufficiently served.

The tenants testified that they sent two more registered mail packages to the landlord more recently; however, the landlord stated that he did not receive them or a notice card. The tenant stated that they also sent the same documents to the landlord via email which the landlord confirmed receiving and stated that he was willing to be deemed sufficiently served with those documents.

The landlord had prepared a written response to the tenants' submissions which were sent to the tenants via email. The tenants confirmed receipt of the landlord's response via email and were willing to be deemed sufficiently served with his hearing documents.

Section 71 of the Act permits me the authority to deem a party sufficiently served with documents even if service did not occur in a manner that is required under the Act. Since both parties acknowledged receipt of documents from the other party via email and were willing to be deemed sufficiently served, pursuant to section 71 of the Act, I deemed both parties to be sufficiently served with each other party's hearing documents. Accordingly, I referred to those documents in making my decision.

During the hearing, the parties were able to reach mutually agreeable terms in resolution of their dispute. I have recorded the agreed upon terms by way of this decision and the Order that accompanies it.

Issue(s) to be Decided

What are the mutually agreed upon terms reached by the parties during the hearing?

Background and Evidence

It was undisputed that the parties executed two tenancy agreements. The first tenancy agreement was for a fixed term tenancy that commenced on September 1, 2012 and was set to expire on September 1, 2014 and the parties agreed that at the end of the fixed term the tenancy would continue on a month to month basis or for another fixed length of time. In June 2014 the parties executed another tenancy agreement for a fixed term tenancy set to commence September 1, 2014 and end on August 30, 2015 and the parties agreed that at the end of the fixed term the tenancy would end and the tenants would have to vacate the rental unit.

I also heard testimony concerning the landlord's requests to enter the unit to inspect the unit and permit showings to realtors.

During the hearing, the parties mutually agreed to the following terms in resolution of their dispute:

1. The tenants shall be permitted occupancy of the rental unit until 5:00 p.m. on August 31, 2015 at which time the tenants will return vacant and peaceable possession to the landlord.
2. A move-out inspection will commence at 5:00 p.m. on August 31, 2015.
3. The landlord will be permitted entry to the rental unit at 8:30 p.m. on August 15, 2015 to inspect the condition of the unit.
4. Except as already agreed upon by way of term 3 above, any other entry must be accomplished by way the landlord giving the tenants proper notice in a manner that

complies with section 29 of the Act and if proper notice is given the tenants shall not interfere with the landlord's right to enter.

5. There will no showings of the rental unit to realtors during the remainder of the tenancy.

Analysis

Pursuant to section 63 of the Act, I have the authority to assist parties in reaching a settlement agreement during the hearing and to record such an agreement in the form of a decision or order.

I have accepted and recorded the terms of the mutual agreement reached by the parties during this hearing and make the terms an Order to be binding upon both parties.

In recognition of the mutual agreement to end the tenancy at 5:00 p.m. on August 31, 2015 I provide the landlord with an Order of Possession to reflect that agreement.

Below, I have reproduced section 29 of the Act for the parties' further reference.

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Conclusion

The parties reached a mutual agreement in resolution of their dispute that I have recorded by way of this decision. In recognition of the mutual agreement, the landlord has been provided an Order of Possession effective at 5:00p.m. on August 31, 2015.

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: August 11, 2015

Residential Tenancy Branch

