



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hotel Bourbon
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPT; OLC

Introduction

This Hearing was convened to consider the Tenant's Application for Dispute Resolution seeking an Order of Possession and an Order that the Landlord comply with the Act, regulation or tenancy agreement.

Both parties signed into the teleconference and gave affirmed testimony.

I advised the parties that my copy of the Tenant's Application was too faint to read. The Tenant's name, address, dispute address and Landlord's address were provided orally during the Hearing and I filled in the Tenant's Application with the information. The Landlord's agents stated that the Respondent on the Tenant's Application is the owner of the rental property, but that the actual Landlord leases the rental property from the named Respondent. With the parties' consent, the Tenant's Application was amended to reflect the correct name of the Landlord.

The Landlord's agents acknowledged receipt of the Notice of Hearing documents and the parties acknowledged service of each other's documentary evidence.

It was determined that the Tenant remains in possession of the rental unit and therefore I find his request for an Order of Possession is not required. This portion of his Application is dismissed. The Hearing continued with respect to the Tenant's request for an Order that the Landlord comply with the Act, regulation or tenancy agreement.

Issues to be Decided

- Should the Landlord be ordered to comply with the Act, regulation or tenancy agreement?

Background and Evidence

The parties entered into a short term lease, commencing July 1, 2015 and ending September 30, 2015. A copy of the lease was provided in evidence. At the end of the term, the lease stipulates that the Tenant must move out of the rental unit.

On September 23, 2015, the parties entered into a new tenancy agreement, a copy of which was also provided. The new tenancy agreement was also a fixed term lease, ending January 1, 2016. The new tenancy agreement also stipulated that the Tenant must move out at the end of the tenancy.

The Tenant stated that he is a 64 year old man with mobility issues. He testified that he was told that he would have to sign a new tenancy agreement every three months, or the Landlord would not take his rent. He stated that later on, the Landlord told him that if they did not like his actions the Landlord would not “renew” the tenancy.

The Tenant testified that he was not given a copy of the tenancy agreements until he asked a friend of his, who used to work for the Landlord, to provide him with a copy.

A copy of a letter dated November 25, 2015, was provided in evidence. The Landlord's agent GM asked the Tenant if he received the Landlord's letter dated November 25, 2015, advising the Tenant that he must move out on December 31, 2015. The Tenant stated that he did receive it and that is why he filed his Application.

GM stated that copies of all of the occupants' tenancy agreements are kept on file and that the Tenant could have received a copy any time. All he had to do was ask for a copy.

GM stated that it is the Landlord's practice is to read tenancy agreements to each new tenant to ensure that they understand what they are signing. The Tenant testified that he thought he had to sign a new tenancy agreement every three months, but that he did not understand what he was signing and that no one read the agreement or explained it to him before he signed it.

The Tenant's advocate submitted that the Landlord was attempting to “bypass the Act” by entering into short term leases with the Tenant. She stated that it provided the Landlord with an “easy out” because the Landlord would not have to issue and enforce a Notice to End Tenancy for Cause. The Tenant's advocate submitted that this took away the Tenant's right to dispute an eviction notice and therefore the Landlord had an unfair advantage.

The Tenant's advocate referred to Residential Tenancy Policy Guideline 8: *Unconscionable and Material Terms*. She submitted that requiring the Tenant to sign new tenancy agreements every 3 months is unconscionable.

The Tenant's advocate submitted that the principle of estoppel should apply because the Landlord did not require the Tenant to move out at the end of the first term.

The Tenant's advocate asked for an order that the tenancy agreement be recognized as a month-to-month tenancy.

The Landlord's agent BP stated that the Landlord had problems with the Tenant "from day one" and that he had conversations with the Tenant throughout the tenancy with respect to his and his guests' behaviour. BP stated that the Tenant understood why the Landlord was not entering into a new tenancy agreement with the Tenant. BP said that the Tenant signed the tenancy agreement, and that it was explained to him. BP submitted that fixed term agreements are allowed in Section 44 of the Act.

Analysis

Estoppel is defined, in part, in Black's Law Dictionary as:

"Estoppel" means that a party is prevented by his own acts from claiming a right to detriment of other party who was entitled to rely on such conduct and has acted accordingly.

The Tenant's advocate stated that the Landlord did not require the Tenant to move out at the end of the fixed term and therefore the Landlord should be estopped from claiming that the tenancy is a fixed term tenancy. However, in this case I find that the Landlord and the Tenant signed a new tenancy agreement before the previous term was completed. The previous agreement then became null and void and therefore the Tenant was not required to move out of the rental unit.

Policy Guideline 8 provides the following with respect to "unconscionable terms":

Under the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*, a term of a tenancy agreement is unconscionable if the term is oppressive or grossly unfair to one party.

Terms that are unconscionable are not enforceable. Whether a term is unconscionable depends upon a variety of factors.

A test for determining unconscionability is whether the term is so one-sided as to oppress or unfairly surprise the other party. Such a term may be a clause limiting damages or granting a procedural advantage. Exploiting the age, infirmity or mental weakness of a party may be important factors. A term may be found to be unconscionable when one party took advantage of the ignorance, need or distress of a weaker party.

I do not find that a three month fixed term tenancy is oppressive, grossly unfair, or that the Landlord has a procedural advantage over the Tenant. If the Landlord wished to

end the tenancy before the three month term expires, the Landlord would still have to issue a Notice to End Tenancy, which the Tenant could dispute.

The Tenant signed the tenancy agreement. During the Hearing, the Tenant testified that he was aware that the agreement was for a fixed three month term before he signed the tenancy agreement. If the Tenant did not wish to enter into a fixed term tenancy, he could have tried to negotiate with the Landlord for a month-to-month tenancy. It is the responsibility of tenants and landlords to read agreements before they sign them to ensure that they understand what they are signing and their rights and obligations under the agreement.

The Tenant's Application seeks an Order that the Landlord comply with the Act, regulation or tenancy agreement. Section 5 of the Act provides that landlords and tenants may not avoid or contract out of the Act and that any attempt to avoid or contract out of the Act or regulations is of no effect. I do not find that the Landlord attempted to avoid or contract out of the Act. Fixed term tenancies are allowed under the Act. Section 12(d) of the regulation requires that tenancy agreements must be written so as to be easily read and understood by a reasonable person. I find that the tenancy agreement signed by both parties complies with Section 12(d) of the regulation.

I find that the Landlord did not comply with Section 13(3) of the Act, which requires a landlord to provide its tenant with a copy of the tenancy agreement within 21 days after entering into the agreement. However, the Tenant acknowledged that he now has a copy of the tenancy agreement and therefore I won't order the Landlord to provide another copy.

Conclusion

The Tenant's application is dismissed 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: February 10, 2016

Residential Tenancy Branch

