



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEIGHBOURHOOD HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes o

Introduction

The tenant has applied for dispute resolution, seeking an order to cancel a Notice to End Tenancy. The tenant did not attend the hearing. An advocate for the tenant attended, but advised he did not have written authority to act as the tenant's agent. The landlord's representative attended. Given that the claim was initiated by the tenant, and accepting the submissions of the advocate that he had expected the tenant to call in for the hearing, it is clear the tenant had notice of this hearing.

At the hearing, the landlord verbally applied for an Order of Possession.

Issues to Be Decided

Has this tenancy ended?

Is the landlord entitled to an Order of Possession?

Background and Evidence

This tenancy began on January 1, 2016. The landlord submits that the agreement was for a fixed term expiring March 31, 2016, as indicated in a written tenancy agreement. The parties specifically initialed a clause in that agreement that the tenant must vacate the premises at the end of the fixed term. On March 1, 2016, the landlord sent the tenant a letter with words "Reminder Notice" on it, and advising that he had to move out on or before March 31, 2016. The tenant filed this dispute on March 3, 2016, and remains in possession. Rent for April has been accepted by the landlord, on a use and occupation basis.

Analysis

Based upon the landlord's testimony and the copy of the tenancy agreement tendered into evidence, I accept that this tenancy is a fixed term tenancy, that expired March 31, 2016, and that the tenant was required to vacate at that time. I further find that the tenancy has been extended to April 30, 2016, by virtue of the landlord's acceptance of the April rent on a use and occupation basis.

The tenant's application is to cancel a Notice to End Tenancy. In fact no such notice was ever given. The landlord's letter was simply a reminder to the tenant that he had to vacate at the end of March, as agreed to in the tenancy agreement. The tenant's application is therefore dismissed.

At the hearing, the landlord applied for an Order of Possession. Section 55 of the Residential Tenancy Act governs this request, and states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

...

(c) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term;

(3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

In this case the tenant's application stated that the tenant was disputing a landlord's notice to end tenancy. As indicated in section 55(1)(a), however, an order of possession can be granted to a landlord only if the subject notice complies with section 52 as to form and content. In this case, the letter given by the landlord to the tenant does not meet those criteria. I am precluded therefore, from granting an order of possession.

The landlord remains at liberty to file an application for an order of possession pursuant to section 55(2)(c) of the Residential Tenancy Act.

Conclusion

The tenant's application is dismissed. The landlord's verbal request for an Order of Possession is denied.

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 12, 2016

Residential Tenancy Branch