



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Parkdale Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, OPB, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession.

The hearing was conducted via teleconference and was attended by two agents for the landlord; the tenant; and his advocate.

I note that while the landlord had applied for an order of possession based on a 1 Month Notice to End Tenancy for Cause no such Notice was issued. As such, I amend the landlord's Application for Dispute Resolution to exclude seeking an order of possession based on a 1 Month Notice to End Tenancy for Cause.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for breach of an agreement; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 44, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties for 3 month fixed term tenancy beginning on November 1, 2015 for a monthly rent of \$490.00 due on the 1st of each month with a security deposit of \$245.00 paid. The agreement stipulated that the tenant must vacate the rental unit effective January 31, 2016; and
- A copy of a Mutual Agreement to End Tenancy signed by the parties on January 28, 2016 stating the tenant agreed to vacate the rental unit by noon on February 29, 2016.

The landlord submitted that their usual practice has been to rent to tenants on a 3 month fixed term basis to determine if they want to continue with a tenant on a more permanent basis.

The landlord submitted that because of the tenant's behaviour during the fixed term tenancy they had decided not to renew the tenancy agreement. The landlord's agent stated that the previous agent did agree to have the tenant stay an extra month but had him sign the Mutual Agreement to End Tenancy noted above.

The tenant's advocate submitted that the tenant asserts that he had no idea that he was signing a fixed term tenancy for 3 months when he signed the tenancy agreement. She stated that the landlord's agent was rushed at the time of the signing. She stated the tenant was showed the unit and was shown the agreement and told to sign it.

The landlord pointed out that the tenant not only signed the full agreement but also initialled the clause agreeing that he must vacate the rental unit at the end of the fixed term.

The tenant's advocate asserted that the tenancy agreement was altered sometime after the tenant signed it. She also asserts that the landlord had entered the rental unit on at least 3 occasions without sufficient notice to do so. She believes the landlord removed the tenant's copy of the tenancy agreement during one of these entries so that he would not have a copy to compare the landlord's copy to. The tenant and her advocate have provided no corroborating evidence of these claims.

The tenant's advocate also submitted that the landlord had "shoved" the Mutual Agreement to End Tenancy in the tenant's face and he was not aware of what he was signing.

The tenants advocate submitted substantial response to the landlord's former agent's written submission indicating the reasons that the fixed term tenancy. Specifically, she stated that many of the circumstances that led to that decision were no fault of the tenant's and in some cases were caused by the landlord's former agent.

The advocate submitted that the landlord should have made the tenant aware of the problems that led to the decision to not renew the tenancy so that the tenant could have had an opportunity to correct any behaviour that was not appropriate.

Analysis

Section 44(1) of the *Act* states a tenancy ends only if one or more of the following applies:

- a) The tenant or landlord gives a notice to end the tenancy in accordance with one of the following:
 - i. Section 45 (tenant's notice);

- ii. Section 46 (landlord's notice: non-payment of rent);
- iii. Section 47 (landlord's notice: cause);
- iv. Section 48 (landlord's notice: end of employment);
- v. Section 49 (landlord's notice: landlord's use of property);
- vi. Section 49.1 (landlord's notice: tenant ceases to qualify);
- vii. Section 50 (tenant may end tenancy early);
- 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;
- c) The landlord and tenant agree in writing to end the tenancy;
- d) The tenant vacates or abandons the rental unit;
- e) The tenancy agreement is frustrated; or
- f) The director orders the tenancy is ended.

I have reviewed the tenancy agreement submitted into evidence and I find that the tenancy agreement clearly outlines that the tenancy would end on January 31, 2016 and that the tenant must vacate the unit at that time. I find the tenant has signed the full tenancy agreement and initialed the clause acknowledging his acceptance of the specific term to vacate the rental unit.

I find that there is no evidence before me to substantiate the tenant's advocate's claim that the tenancy agreement has been altered after signing. I also find that there is no evidence to corroborate the tenant's position that he was rushed in signing the document or that he was aware that it was only for a fixed term or that he would be required to vacate the unit. In fact, I find the evidence shows that he acknowledge the term when he initialed the tenancy agreement.

I find there is nothing in the tenancy agreement that outlines what would be considered by the landlord as to extending the tenancy on a more permanent basis. As such, I find the landlord was not required to have any reasons such as the tenant's behaviour to not extend the tenancy beyond the 3 month fixed term. The tenancy agreement would simply end and the tenant would be required to vacate, unless the parties signed a new tenancy agreement.

I accept that the landlord allowed the tenant to stay one additional month and that both parties agreed that the tenant would vacate the rental unit at the end of February 2016. I find there is no evidence to corroborate the tenant's assertion that the mutual agreement was "shoved" in his face or that he did not have an opportunity to read it before he signed it agreeing to vacate the rental unit by February 29, 2016.

Based on the above, I find that the original tenancy was scheduled to end on January 31, 2016 but that the landlord extended the tenancy to the end of February 2016 and by agreement with the tenant allowing the tenant one additional month of tenancy. I find the tenant also agreed that he would vacate the rental unit by February 29, 2016. As such, I find the tenant must vacate the rental unit.

While I have found the tenant had been required to vacate the rental unit by the end of the tenancy, February 29, 2016, the parties agreed to allow the tenant to stay in the rental unit until May 31, 2016 as the tenant is currently recovering from medical treatment.

Conclusion

I find the landlord is entitled to an order of possession effective **May 31, 2016 after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$100.00** comprised of the fee paid by the landlord for this application. I order the landlord may deduct this amount from the security deposit of \$245.00 held in satisfaction of this claim. I note this leaves a balance of \$145.00 in the security deposit that must be dealt with at the end of the tenancy, pursuant to the obligations of both parties under the *Act*.

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 25, 2016

Residential Tenancy Branch