



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OP

Introduction

On May 12, 2016, the Landlord submitted an Application for Dispute Resolution requesting that an order of possession be granted because the Tenant did not move out as agreed to in writing within the tenancy agreement.

The matter was set for a conference call hearing at 11:00 p.m. on June 14, 2016. The Landlords attended the hearing but the Tenant did not. The Landlords testified that they served the Notice of Hearing on the Tenant by registered mail on May 19, 2016. The Landlords provided the registered mail tracking number as proof of service. The Landlords provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is the Landlord entitled to an order of possession based on a tenancy agreement for a fixed term tenancy?

Background and Evidence

The Landlords testified that they purchased the house and took possession on March 3, 2016. They testified that the former owner rented out the basement suite to the Tenant. They testified that the Tenant previously signed a tenancy agreement for a fixed term tenancy starting on May 1, 2015 and ending on April 30, 2016.

The Landlords testified that the tenancy agreement states that rent is \$790.00 per month and that the Tenant paid a security deposit of \$200.00 to the Landlord.

The Landlord testified that the Tenant refused to move out of the rental unit on April 30, 2016. The Landlord testified that they accepted rent for the month of May 2016, but they still expect the Tenant to move out as required by the tenancy agreement.

Section 44 of the Act states that if on the date specified as the end of a fixed term tenancy agreement that does not require the Tenant to vacate the rental unit on that date, the Landlord

and Tenant have not entered into a new tenancy agreement, the Landlord and Tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

The Landlords did not provide a copy of the tenancy agreement prior to the hearing. The Landlords agreed to provide a copy of the tenancy agreement and testified that a copy was sent to the Residential Tenancy Branch via fax during the hearing.

After waiting for 24 hours, a copy of the tenancy agreement has not been received at the Residential Tenancy Branch.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Landlord has not provided sufficient evidence to prove that the tenancy agreement required the Tenant to move out of the rental unit on April 30, 2016.

The current Landlord is bound by the terms of the tenancy agreement that the previous Landlord and Tenant agreed too.

The Landlord's application for an order of possession is dismissed with leave to reapply.

The tenancy continues until ended in accordance with the Act.

Conclusion

The Landlord's application for an order of possession based on a fixed term of tenancy within the tenancy agreement is dismissed.

The tenancy continues until ended in accordance with 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: June 15, 2016

Residential Tenancy Branch