



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OLC FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62 and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to comply with the *Act*?

Is the tenant entitled to an authorization to recover the filing fee?

Background and Evidence

This tenancy began on October 1, 2014 with a rental amount of \$1700.00 payable on the first of each month. The landlord continues to hold the tenant's \$850.00 security deposit paid at the outset of the tenancy. The tenant applied for an order requiring the landlord to comply with the *Act*. The tenant submits that his tenancy is a renewable fixed term whereas the landlord submits that the tenancy was a fixed term with an end date (September 30, 2016).

The tenant/applicant provided a copy of the residential tenancy agreement. The agreement is provided in the form of a standard Residential Tenancy Branch Tenancy agreement and is dated October 1, 2014, signed by both parties. Under "Length of Tenancy", the agreement indicates that "[this] tenancy is for a fixed length of time ending on 30 September 2016... At the end of this fixed length of time:the tenancy may continue for another fixed length of time".

Under "Ending the Tenancy", the residential tenancy agreement indicates that "[if] this is a fixed term tenancy and the agreement does not require the tenant to vacate at the end of the

tenancy, the agreement is renewed as a monthly tenancy on the same terms until the tenant gives notice to end a tenancy as required under the ... [Act]”.

The landlord submits that the prospect of a month to month tenancy was never discussed between the two parties and that he wishes to sell the residential premises. The tenant refers to emails submitted as evidence for this hearing from the tenant to the landlord indicating his desire to renew the lease for a further 2 year term.

Analysis

There is evidence that proves that this tenancy began as a one year fixed term tenancy to end on September 30, 2016. Residential Tenancy Policy Guideline No. 30 provides direction on the definition and terms of a fixed term tenancy:

A fixed term tenancy is a tenancy where the landlord and tenant have agreed that the tenancy agreement will begin on a specified date and continue until a predetermined expiry date...

Section 44 of the *Act* addresses how a tenancy ends, including a fixed term tenancy:

44 (1) A tenancy ends only if one or more of the following applies:
...(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...

Section 44(3) (and reiterated at Policy Guideline No. 30) provides guidance if an agreement does not indicate that the tenant will vacate,

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.

(emphasis added)

In this form of tenancy, a term is fixed for the assurance of both parties. While the tenant submitted that he is entitled to renew his tenancy for a second fixed term, he is not: the residential tenancy agreement reads that the tenancy **may** continue for another fixed term however the tenant has not obtained the landlord's written agreement to continue this tenancy for another fixed term. I find that the landlords have not agreed to renew this rental agreement. However, I also note that the landlords' drafting of this agreement has led to some ambiguity or uncertainty as evidenced by this dispute between the parties. I find that the ambiguous clause ("that the tenancy *may* continue for another fixed term") must be interpreted against the landlord.

In considering the legislation and Policy Guidelines regarding fixed term tenancies, I rely on section 44(3) where the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms. The tenant's failure to obtain the consent of the landlord for a new fixed term and the landlord's failure to create a fixed term tenancy with an indisputable end date results in a need to apply the legislation as it currently reads to ensure the proper interpretation of this agreement.

I find that the tenancy will continue on a month to month basis in default in accordance with the legislation (section 44(3) of the Act). The tenancy shall continue and will default to month to month tenancy as of September 30, 2016.

As the tenant has been partially successful in this application, I find the tenant is entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenancy shall continue on a month to month basis as of September 30, 2016.

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: September 13, 2016

Residential Tenancy Branch