



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, FF

Introduction

This is an application brought by the Landlord requesting an Order of Possession, alleging that the tenants have breached the conditions of the tenancy agreement. The applicant is also requesting recovery of the filing fee

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

The issue is whether or not the tenants were required to vacate the rental unit at the end of the fixed term tenancy, and whether or not to issue an order of possession.

Background and Evidence

Landlord testified that this tenancy began on November 10, 2015 for a fixed term ending November 14, 2016.

The landlord further testified that, on the tenancy agreement, the following box had been checked off:

- *The tenancy ends and the tenant must move out of the rental unit.*
 - *If you choose this option both the landlord and tenant must initial in the boxes to the right.*

The landlord further testified that both the landlords and the tenants did initial in the boxes to the right and he has supplied a copy of the tenancy agreement in support of this claim, showing both boxes have been initialed.

The landlord further testified that the tenants are refusing to move out of the rental unit as required, and therefore he is requesting an Order of Possession for as soon as possible.

The tenants testified that they did not initial the box beside the clause requiring them to move out at the end of the fixed term, and in fact have supplied their copy of the tenancy agreement which clearly shows that although the landlord initial the box, they did not.

The tenants further testified that they would never have initialed that box, as they did not want to vacate in one year, and in fact, in the addendum to the tenancy agreement section number 12 states:

- *The tenants have the right to extend this tenancy agreement and the conditions contained therein for a further length of time by mutual agreement and signing by both parties.*

The tenants further testified that if there are initials in the landlords copy of the tenancy agreement they were not put there by them.

In response to the tenants testimony the landlord testified that the tenants did initial the box on his copy of the tenancy agreement however, he does admit that the box had not been initialed on the copy he gave to the tenants, he assumed they would initial the box on their copy after it was given to them.

Analysis

It is my decision that the landlord has not met the burden of proving that the tenants were required to vacate this rental unit at the end of the fixed term.

Section 13 of the Residential Tenancy Act states:

13 (1) *A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.*

Therefore, it is the **landlord's responsibility** to ensure that all copies of the tenancy agreement are the same, so that all parties know their rights and responsibilities. If the landlord gives a copy of the tenancy agreement to the tenants, that is different than the copy that he keeps for himself, he is bound by the copy that he gave to the tenants.

The tenants have provided a copy of the tenancy agreement that was given to them by the landlord, and it clearly does not have their initials in the box requiring them to vacate and in fact the landlord admitted that the box had not been initialed when he gave them a copy.

It is my decision therefore that the landlord is bound by the copy of the tenancy agreement that he gave to the tenants, on which the tenants did not agree to vacate the rental unit at the end of the fixed term.

I therefore will not allow the landlords request for an Order of Possession.

Conclusion

Pursuant to section 62 of the Residential Tenancy Act this application is dismissed in full without leave to reapply.

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: December 22, 2016

Residential Tenancy Branch