



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for an Order of Possession pursuant to section 55, and authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent, JH, testified on behalf of the landlord in this hearing and was given full authority to do so by the landlord. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package ("Application") as well as the evidence package. In accordance with sections 88 and 89 of the Act, I find that the tenant was duly served with copies of the landlord's Application and written evidence.

Issues to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlord's agent testified regarding the following facts. This one year fixed term tenancy began on February 1, 2016 with monthly rent currently set at \$1,980.00, which is payable on the first day of each month. The landlord currently holds a security deposit in the amount of \$950.00. A copy of the tenancy agreement was included in the evidence which stated "The Lessor and the Lessee agree that this tenancy agreement shall terminate absolutely on the **31st day of January, 2017** and the Lessee will vacate the premises on that date unless the Lessor and Lessee enter into a new mutually acceptable fixed term or month to month tenancy agreement in writing on or before **November 30th, 2016**".

The landlord's agent testified that several formal letters, and emails, were exchanged between himself and the tenant beginning with a letter dated October 25, 2016 which offered the tenant a lease renewal commencing February 1, 2017 for a further period of one year, with rent set at \$2,030.00 per month. The letter also noted an attached "Notice of Residential Rent Increase", which was not included in the evidence. Several emails were sent back and forth between the tenant and the landlord's agent discussing the extension of the lease, and the proposed monthly rental should a new tenancy agreement be undertaken. An email was sent to the tenant on November 29, 2016 offering a two month extension at \$2,100.00 per month. The landlord's agent testified that no response from the tenant occurred after that last email, and a follow-up email was sent by him on November 30, 2016 maintaining that the rent increase was legal, and that the current lease terminates on January 31, 2017. Another email was sent on December 5, 2016 by the agent notifying the tenant that "as we did not hear from you, the owner has decided not to extend a new lease with you and the tenancy will terminate as of 1pm on January 31st, 2017".

The agent testified in the hearing that it was clear on the written tenancy agreement, and by the letter and email correspondence between himself and the tenant, that the lease would end on January 31, 2017 if no new, written agreement was entered into by both the landlord and the tenant by the November 30, 2016 deadline. As this did not occur, the landlord is seeking an Order of Possession to take effect on January 31, 2017.

The tenant did not dispute the fact that this tenancy would terminate on January 31, 2017, nor did he dispute the fact that November 30, 2016 was the deadline to enter into a new mutually agreement between himself and the landlord. The tenant testified that the communication between himself and the landlord was very casual and friendly, and in addition to the letters and emails there were several undocumented phone calls. The tenant testified that most of the communication was by phone call, and he was in the middle of making arrangements for his elderly mother to move into a retirement home.

Due to the circumstances, the tenant requested from the landlord a two month extension on the lease, and he testified that because he had lived in Asia for much of his life he was unfamiliar with the *Residential Tenancy Act* and Rules. He testified that he is an excellent tenant, and the landlord simply wanted to increase the rent through a new lease agreement instead of renewing the current lease. The tenant testified that this seemed illegal to him, and questioned how the landlord reduced the offer from \$2,350.00 to \$2,100.00 after he questioned the legality of the rent increase. The tenant testified that he believed the landlord "dragged it out" past the deadline, and this was

pure manipulation on the landlord's part and he did not receive a prompt reply from the landlord when he raised the issue of the rent increase. The tenant felt that he was at a clear disadvantage as he did not possess the knowledge to know what is legal and what was not legal.

The landlord's agent responded that the first letter was sent on October 25, 2016, with the header "lease renewal", and that it was ample time before the November 30, 2016 deadline. He testified that he was unaware of the tenant's family situation, and that the initial offer of \$2,350.00 was market value, but after negotiating with the owner the agent was able to obtain a lower rent of \$2,100.00 a month. As the offer was not accepted by deadline, the owner rescinded the offer.

The tenant testified that he had made efforts to correspond with the landlord, but the back and forth caused him much confusion. He testified that he had nowhere to go, and that he wanted to extend the lease.

Analysis

Section 55(2)(c) of the Act, in part, states as follows: "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".

Based on the testimony of the landlord and the tenant and the supporting documents respecting the matter before me, I find that the fixed term tenancy agreement is a valid one, and that the terms of the agreement were clear to the tenant.

The landlord testified that ample opportunity was given to the tenant to sign a new lease agreement, but as this did not occur, the tenancy should end on January 31, 2017, as per the written tenancy agreement. The tenant testified that his lack of legal knowledge put him at a clear disadvantage, and he believed the process to be an unfair one.

I have considered the testimony of both parties, as well as the evidence before me. The landlord had produced several pages of correspondence to support the fact that the landlord did make an effort to provide the tenant with a new lease agreement. The tenant did not provide any written evidence, but I am satisfied that he understood this current fixed term lease would end January 31, 2017 if no new written agreement was signed by both parties by November 30, 2016. As the landlord initiated correspondence with the tenant, in writing, on October 25, 2016, and as this lease agreement was signed on October 19, 2015, I find the tenant had ample opportunity to seek legal

advice in regards to the tenancy, and its terms. I am, therefore, allowing the landlord's application for an Order of Possession. Effective at 1:00 p.m. on January 31, 2017 this tenancy will come to an end.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

Conclusion

I grant an Order of Possession to the landlord effective at 1:00 p.m. on January 31, 2017. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

As the landlord was successful in this application, I find that he is entitled to recover the \$100.00 filing fee. To implement this monetary award, I order the landlord to retain \$100.00 from the tenant's security deposit. The current value of the security deposit is reduced from \$950.00 to \$850.00.

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: January 20, 2017

Residential Tenancy Branch