Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPB FF

Introduction:

All the parties attended the hearing and gave sworn testimony. They confirmed that the Application for Dispute Resolution was filed and served by the landlord as they had a fixed term tenancy agreement which expired February 28, 2017. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

a)   An Order of Possession pursuant to Sections 44(1)(b), and 55 as the tenant has breached a term of the fixed term tenancy agreement by stating they will not vacate as agreed; and an order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Is the landlord entitled to an Order of Possession and to recover the filing fee?

Background and Evidence:

All parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenant commenced living in the premises May 1, 2016 on a fixed term lease expiring in August 2016, a security deposit of $750 was paid and rent was $1600 a month. The home was sold and the present landlord and tenants signed another fixed term lease expiring February 28, 2017. The landlord said he told the tenants that he would give them a couple of months notice if he was not going to continue the tenancy. He said he told them in January 2017 that the lease would end as stated and vacant possession would be required as the lease provided. He said in February 2017, he asked them if they had found another place but they said No so he told them he would have to make an Application to get an Order of Possession as he already had new tenancy commencing in April 2017. He said the female tenant yelled at him.

The landlord said that he agreed with the tenants to sign a one month lease expiring on March 31, 2017 and requiring vacant possession then. They all signed the lease (in evidence) and the tenants paid $1600 in rent for that month.

The tenants did not dispute the basic facts above but said they were half moved out already. They said they should not have to pay a filing fee to the landlord as he filed prematurely. They said they found a place the day after and signed a new lease. The

landlord said the application was not premature as the tenants clearly indicated they were not ready to move out at the end of their fixed term on February 28, 2017. He called the Residential Tenancy Branch and they advised him that it would take several weeks to have a hearing scheduled and he already had new tenants.

Analysis
Order of Possession
I find that the landlord is entitled to an Order of Possession. The most recent fixed term lease requiring vacant possession expires on March 31, 2017. I find the landlord entitled to an Order of Possession effective March 31, 2017.

Although the tenants contended the landlord should not be entitled to recover the filing fee because he filed prematurely, I find he is entitled to recover this fee. I find his evidence credible that the tenants clearly indicated they were not ready to vacate at the end of the first fixed term on February 28, 2017. I find the male tenant agreed he told the landlord that he had not found a place to live in early February 2017 and the female tenant responded with, "What's that got to do with anything?" when the landlord said she was yelling at him on this matter. Furthermore, the landlord's credibility is supported by the fact that he had to give them a new fixed term lease for one month.

Conclusion:
I find the landlord is entitled to an Order of Possession effective March 31, 2017 and to recover his filing fee.

I HEREBY ORDER that the landlord may deduct $100 from the security deposit that he holds in trust for the tenants to recover the filing fee.

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: March 08, 2017

Residential Tenancy Branch