



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for breach of an agreement with the landlord, pursuant to section 55;

Issue(s) to be Decided

Is the landlord entitled to an order of possession for breach of an agreement with the landlord?

Background and Evidence

As per the submitted tenancy agreement, the tenancy began on August 29, 2015, on a fixed term of "twelve months". The tenancy agreement has a "surrender on termination" clause. This clause reads;

"Immediately upon termination of this lease, whether by effluxion of time or otherwise, the Tenant will vacate and deliver up possession of the Lease Premises in a neat and tidy state. At the same time the Tenant will surrender to the Landlord at the place then fixed for the payment of Rent all keys and other devices that provide access to the Leased Premises or any part of it and will inform the Landlord of all combinations to locks, safes, and vaults, if any, in the Leased Premises."

[Reproduced as written]

On August 29, 2016, the parties signed a "modification" to the tenancy agreement in which the parties agreed to remove the term of "12 months" and replace it with "August 29, 2015 to January 31, 2017."

It is the landlord's position that the tenants signed the tenancy agreement and modification therefore they were obligated to provide vacant possession of the rental unit on January 31, 2017 and failed to do so. The landlord seeks an order of possession.

The tenants testified that they began looking for new accommodation prior to January 31, 2017 but were unsuccessful in securing a new unit. The tenants claim the “surrender on termination” clause is not clear and is therefore not enforceable.

Analysis

Section 44 of the *Act* establishes that a tenancy may end if 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.

Pursuant to section 55 of the *Act*, the landlord may be granted an order of possession if 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.

I find the “surrender on termination” clause in conjunction with the modification to the tenancy agreement which specifies the end date of January 31, 2017 sufficiently satisfies the requirements of the *Act*. The tenants’ acknowledgement that they began looking for new accommodation prior to the expiry of the term indicates to me that the tenants were very aware that their tenancy would terminate at the end of the fixed term. Further I find that because the original tenancy agreement was extended after twelve months the tenants knew or ought to have known that in the absence of a second renewal they were required to vacate at the end of the fixed term specified in the modification.

For the reasons stated above, I find the landlord is entitled to an order of possession effective 1:00 p.m. April 30, 2017.

Conclusion

The landlord’s application for an order of possession is granted.

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: April 05, 2017

Residential Tenancy Branch