



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEUCHATEL CONSULTING GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPB, FF, OLC

Introduction

The hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution in which the Landlord applied for an Order of Possession and to recover the fee for filing an Application for Dispute Resolution.

The Agent for the Landlord stated that on May 06, 2017 the Landlord's Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and I therefore find that they were served in accordance with section 89 of the *Residential Tenancy Act (Act)*.

The Tenant filed an Application for Dispute Resolution in which the Tenant applied for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement.

The Tenant stated that on May 03, 2017 the Tenant's Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents and I therefore find that they were served in accordance with section 89 of the *Act*.

The Tenant stated that the Tenant submitted no evidence to the Residential Tenancy Branch.

On June 05, 2017 the Landlord submitted 49 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was personally served to the occupant on June 05, 2017. The occupant acknowledged receiving this evidence on June 05, 2017. The Tenant acknowledged receiving the evidence from the occupant.

The Tenant stated that he has had insufficient time to consider the evidence submitted by the Landlord and he requested an adjournment for the purposes of considering that evidence.

The evidence served to the Tenant was not served in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure. As the evidence was only served two days prior to this hearing, the Agent for the Landlord was advised that I was inclined to adjourn the hearing to provide the Tenant with time to consider the Landlord's evidence, at which point the Agent for the Landlord stated that he wished to proceed without the benefit of the evidence package submitted by the Landlord.

As the Agent for the Landlord stated that he wished to proceed without the benefit of the evidence package submitted by the Landlord, this hearing was not adjourned and the majority of the Landlord's evidence was not accepted as evidence for these proceedings.

During the hearing the Tenant stated that he was in possession of the tenancy agreement, dated March 07, 2017, which was included in the Landlord's evidence package. He agreed that this particular document can be considered as evidence for these proceedings. As the Tenant agreed that the tenancy agreement could be considered as evidence, it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Is there a need to issue an Order requiring the Landlord the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement?

Background and Evidence

The Agent for the Landlord stated that this tenancy began on December 15, 2016. The Tenant stated that it began on December 01, 2016.

The Landlord and the Tenant agreed that rent of \$1,600.00 was due by the first day of each month.

The Landlord stated that the initial tenancy agreement was a verbal agreement and the Tenant stated that there was a written tenancy agreement, which he signed on December 02, 2016. The Tenant did not submit a copy of a written tenancy agreement.

The Agent for the Landlord stated that when the tenancy began in December of 2015 the parties agreed that the tenancy was for a fixed term, the fixed term of which ended on March 31, 2017. He stated that the parties agreed that the rental unit would be vacated on March 31, 2017.

The Tenant stated that when the tenancy began in December of 2015 the parties agreed that the tenancy was for a fixed term, the fixed term of which ended on May 31, 2017. He stated that the parties did not agree that the rental unit would be vacated on May 31, 2017.

The Agent for the Landlord stated that on March 07, 2017 the Landlord and the Tenant entered a new tenancy agreement, which was signed by the Agent for the Landlord, the Tenant, and the Witness for the Tenant. He stated that he emailed a copy of the unsigned tenancy agreement to the Witness for the Landlord; that he and the Witness for the Landlord both signed it on March 07, 2017; that the Tenant had already signed the agreement when it was signed by the Agent for the Landlord; and that a copy of the signed agreement was given to the Witness for the Landlord on March 07, 2017.

The Tenant stated that he was ill when he signed the tenancy agreement on March 07, 2017; that the Witness for the Tenant brought the agreement to him; that the Witness for the Tenant returned the signed tenancy agreement to the Landlord on his behalf; that he did not authorize the Tenant to sign the tenancy agreement on his behalf; and that when he signed the agreement he did not understand the agreement required him to vacate the rental unit on April 30, 2017.

The Landlord and the Tenant agree that the tenancy agreement that was signed on March 07, 2017 declares that the tenancy is for a fixed term; that the agreement initially declared that the fixed term ends on March 31, 2017; that the fixed term was amended to show that it ends on April 30, 2017; and that the Tenant must vacate the unit by April 30, 2017. The parties agree that the Tenant is the only tenant named in the agreement.

The Occupant of the rental unit stated that the Tenant, who is his father, signed the tenancy agreement a few days after the Witness for the Tenant signed the agreement. He stated that the Witness for the Tenant understood the parties were entering into a month to month tenancy when he delivered the tenancy agreement to the Agent for the Landlord.

The Tenant contends that the Landlord did not sign the second tenancy agreement, which the Agent for the Landlord disputes.

The Landlord and the Tenant agree that the Witness for the Tenant initialled the change on the second agreement that amends the end date of the fixed term to April 30, 2017 and that the Witness for the Tenant initialled the term on the second agreement that requires the Tenant to vacate the unit at the end of the fixed term. The parties agree that the Tenant did not initial these areas.

The Landlord and the Tenant agree that the Tenant attempted to pay the rent for May of 2017, which the Landlord did not accept. The parties agree rent has not been paid for June of 2017.

The Witness for the Tenant stated that he delivered a tenancy agreement to the Landlord on March 07, 2017 at the request of the Tenant, who was ill. He stated that he was not acting as an agent for the Tenant on March 07, 2017; he was simply delivering documents for the Tenant. He stated that when he met with the Agent for the Landlord he believed the Tenant and the Landlord were entering into a month to month tenancy.

The Witness for the Tenant stated that he is not named on the tenancy agreement he signed; that he and the Agent for the Landlord signed the tenancy agreement at the same time; that he signed it simply because the Agent for the Landlord insisted he sign it; that he did not read the document prior to signing it; and that he does not recall initialling portions of the tenancy agreement, although it is possible he did so.

The Witness for the Tenant stated that he did not ask the Tenant to sign the tenancy agreement before he delivered it to the Landlord; he does not know if the Tenant signed the agreement before it was delivered; and the Tenant did not ask him to sign the tenancy agreement on his behalf.

In response to questions from the Agent for the Landlord the Witness for the Tenant stated that he was not acting as an agent for the Tenant when he delivered the tenancy agreement and he was not acting as an agent for the Tenant when he delivered a rent cheque from the Tenant.

The Landlord is seeking an Order of Possession, as the Landlord believes the tenancy agreement required the Tenant to vacate the rental unit on April 30, 2017. The Tenant is seeking confirmation that he is not required to vacate the rental unit on the basis at the end of the fixed term of the tenancy agreement.

Analysis

On the basis of the undisputed evidence I find that in December of 2016 the Landlord and the Tenant entered into a tenancy agreement, for which the Tenant was required to pay monthly rent of \$1,600.00 by the first day of each month.

I find that there is insufficient evidence to determine whether the initial tenancy agreement was a verbal agreement, as the Landlord contends, or a written tenancy agreement, as the Tenant contends. In reaching this conclusion I was heavily influenced by the fact a tenancy agreement that was allegedly signed on December 02, 2016 was not submitted in evidence.

I also find that there is insufficient evidence to determine whether the initial tenancy agreement was for a fixed term that ended on March 31, 2017, as the Landlord contends, or for a fixed term that ended on May 31, 2017, as the Tenant contends. In reaching this conclusion I was heavily influenced by the absence of any documentary evidence that corroborates the differing version of events.

Regardless of the terms of the initial tenancy agreement, I find that the parties entered into a new tenancy agreement on March 07, 2017. In reaching this conclusion I have placed no weight on the Tenant's submission that the Landlord did not sign this agreement, as that submission is not supported by the tenancy agreement or the testimony of the Agent for the Landlord or the Witness for the Tenant.

On the basis of the Tenant's testimony that he signed the agreement and asked the Witness for the Tenant to deliver it to the Landlord, I find that he intended to enter into a new tenancy agreement.

On the basis of the tenancy agreement that was submitted in evidence I find that the tenancy agreement signed by the Tenant declared that the tenancy was for a fixed term. I therefore find that the Tenant knew, or should have known, that the new tenancy agreement was for a fixed term, as that information is clearly recorded on the agreement.

I find there is insufficient evidence to determine whether the Tenant agreed that the fixed term of the tenancy ended on March 31, 2017 or April 30, 2017. In reaching this conclusion I was heavily influenced by the fact the end date of the tenancy has been changed and that the Tenant has not initialled the change. I therefore have insufficient evidence to establish that he agreed to that change.

On the basis of the testimony of the Tenant I find it entirely possible that he did not understand the tenancy agreement required him to vacate the rental unit at the end of the fixed term of the tenancy. In reaching this conclusion I was heavily influenced by the fact the term that indicates the rental unit must be vacated at the end of the fixed term appears to have been checked by hand. Given that the majority of the other entries on the tenancy agreement were typed, I find it entirely possible that this area was not marked when the Tenant signed the tenancy agreement.

The reason there is an area in the tenancy agreement beside the term that requires a tenant to vacate at the end of the fixed term is to clearly demonstrate the tenant is agreeing to this term. The undisputed evidence is that this term was only initialled by the Landlord and the Witness for the Tenant. As there is no evidence to show that the Tenant agreed to vacate the rental unit at the end of the fixed term, I find that the Tenant is not obligated to comply with this term of the tenancy agreement.

On the basis of the testimony of the Tenant and the Witness for the Tenant I find that the Witness for the Tenant was not acting as an agent for the Tenant when he delivered the tenancy agreement to the Landlord on behalf of the Tenant. Rather, I find that he was merely acting as a courier for the Tenant. As the Witness for the Tenant was not acting as an agent for the Tenant, I find that he could not agree to any terms in the tenancy agreement on behalf of the Tenant.

In concluding that the Witness for the Tenant was not acting as an agent for the Tenant I was influenced by the Witness for the Tenant's testimony that the Tenant did not ask

him to sign the tenancy agreement on his behalf; that he was simply delivering the documents on behalf of the Tenant; and that he was not acting as an agent for the Tenant when he delivered the agreement.

In concluding that the Witness for the Tenant was not acting as an agent for the Tenant I was further influenced by the Tenant's testimony that the Witness for the Tenant was simply delivering the signed tenancy agreement to the Landlord on his behalf and he did not ask the Witness to sign the tenancy agreement on his behalf.

In determining whether the Witness for the Tenant was acting as an agent for the Tenant I have placed little weight on the fact the Witness signed and initialed the tenancy agreement, as the Witness' testimony that he signed it because the Agent for the Landlord insisted he sign it is credible. I find the Witness for the Tenant's testimony that he did not read the document and that he does not know if the Tenant signed it before it was delivered is consistent with the actions of a person who is only signing a document because someone else is directing him to do so.

In concluding that the Witness for the Tenant was not acting as an agent for the Tenant I placed no weight on the undisputed testimony that the Witness for the Tenant when he delivered a rent cheque from the Tenant. I find that this merely establishes that the Witness has acted as a courier for the Tenant, as the Witness contends.

Section 44(3) of the *Act* stipulates that 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.

As there is insufficient evidence to conclude that the Tenant was obligated to vacate the rental unit at the end of the fixed term of the second tenancy agreement and that parties have not entered into a new tenancy agreement, I find that the parties are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

As this tenancy is deemed to have been renewed as a month to month, I dismiss the Landlord's application for an Order of Possession.

The Landlord has failed to establish the merits of the Application for Dispute Resolution and I dismiss the Landlord's application to recover the fee for filing an Application.

Conclusion

The Landlord's application for an Order of Possession is dismissed. This tenancy will continue on a month to month basis until it is ended in accordance with the *Act*.

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: June 08, 2017

Residential Tenancy Branch