



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC Housing Management Commission
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPQ, OPB, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession because the tenant does not qualify for subsidized housing, and for breach of an agreement with the landlord, as well as a monetary order for recovery of the filing fee.

An agent and a witness for the landlord and the tenant attended the hearing, and the landlord's agent and the tenant each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions. The landlord's witness did not testify or take part in the hearing, but remained in attendance throughout.

The tenant agrees that all evidence of the landlord has been served on the tenant, all of which has been reviewed and is considered in this Decision.

The tenant provided evidence to the Residential Tenancy Branch and to the landlord, but the evidence was not received within the time required by the Rules of Procedure, and the landlord opposed inclusion of it. I did not have the evidence of the tenant before me during the hearing, and received it after the hearing had ended. The landlord's agent submitted that it should not be included because it was late, not because he didn't have time to review it, or that it might prejudice the landlord. The evidentiary material is stamped as being received by the Residential Tenancy Branch on June 23, 2017 and the landlord's agent advised he had received it last Friday, which is June 23, 2017. The hearing took place on June 28, 2017, and the landlord has had 5 days to review it. I find that it would not be prejudicial to the landlord if it were considered, and would be prejudicial to the tenant if it was not considered in this Decision, given that the tenant advised that she attempted to provide it but didn't have a dispute to file. I accept that, and I allow the evidence of the tenant.

Issue(s) to be Decided

- Should the landlord be granted an Order of Possession because the tenant does not qualify for subsidized housing?

- Has the landlord established that an Order of Possession should be granted for breach of an agreement?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on December 1, 2016 and the tenant still resides in the rental unit. Rent in the amount of \$328.00 per month is payable on the 1st day of each month and there are no rental arrears. No security deposit or pet damage deposit were collected by the landlord.

A copy of the tenancy agreement has been provided by the landlord as evidence for this hearing. It states:

"Length of the Tenancy

"This tenancy starts on 01/12/2016. For a fixed length of time, for 5 months, ending on 30/05/16.

"At the end of this length of time

"(c) the tenancy ends and the tenant must move out of the rental unit.

"If (c), both the landlord and tenant must initial the box to the right."

An initial appears for the tenant in the box to the right, but no initial of the landlord. The landlord's agent further testified that the tenancy agreement contains errors, in that a 5 month term would have ended the tenancy April 30, 2017, not May 30, 2016, and agrees that the date written is incorrect for the month and the year.

The tenant was moved to other units within the complex over time, due to garbage and damage that had to be repaired, which is why the landlord had a 5 month tenancy agreement. As per the landlord's procedures, the landlord decided to give the tenant another 5 month term, but despite a number of phone calls, and despite speaking to the tenant after meeting on the street by accident, the tenant has not signed a new tenancy agreement. The landlord has also sent letters to the tenant, copies of which have been provided, regarding the end of the fixed term and the tenant's failure to comply with the tenancy agreement or enter into a new 5 month fixed term.

The landlord seeks an Order of Possession for breach of the fixed term agreement, and the landlord's agent testified that since the fixed term has expired, the tenant doesn't qualify for subsidized housing.

The tenant testified that the Residential Tenancy Branch advised the tenant that she couldn't have a hearing without a dispute, and the tenant was not served with a notice to end the tenancy, so couldn't dispute. There was also confusion about providing evidence for this hearing, and the tenant submitted a copy of the lease she had in her possession, but was not able to have it included for this hearing until recently. The tenant testified that her copy has no

writing on it indicating a 5 month term or any end date of a fixed term. The late evidence of the tenant confirms that testimony.

The tenant also testified that she has not done anything wrong. Rent is paid on time, the tenant doesn't bother anyone. The tenant disputes that the landlord should obtain an Order of Possession, and testified that she is frightened of the landlord's agent.

Analysis

Where a landlord applies for an Order of Possession, for breach of a fixed term agreement or for the tenant failing to qualify for subsidized housing, the onus is on the landlord to establish the reasons. In this case, the landlord lead no evidence with respect to what is required of a tenant to qualify for subsidized housing, but the landlord's agent testified that the tenant doesn't qualify because a fixed term had expired. I don't accept that.

With respect to the fixed term, I have reviewed both tenancy agreements provided by the parties, and both contain an initial in the box for the tenant, and both contain no initials in the box for the landlord. The tenant's copy has no dates filled in for a fixed term, nor does it specify 5 months. A landlord is required to give a tenant a copy of a tenancy agreement within 21 days after it is entered into, and if it is amended, it's a new agreement and the tenant is still entitled to a copy within that time. A 5 month term would have ended on April 30, 2017 and the landlord's copy of the tenancy agreement shows May 30, 2016. I do not accept that the tenant entered into a fixed term agreement, and therefore has not breached it.

In the circumstances, I am not satisfied that the landlord has established that an Order of Possession should be granted, and I dismiss the landlord's application in its entirety without leave to reapply.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety 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: June 29, 2017

Residential Tenancy Branch