



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KEY PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, OPB, FF

Introduction

This hearing dealt with cross applications. The tenant applied for orders for the landlord to comply with the Act, regulations or tenancy agreement. The landlord applied for an Order of Possession based on the expiry of a fixed term tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Did the tenancy end at the end of the fixed term and is the tenant required to vacate the rental unit?
2. Is it necessary to issue any orders for compliance?
3. Is the landlord entitled to an Order of Possession?

Background and Evidence

The parties executed a tenancy agreement on February 16, 2016 and February 17, 2016 requiring the tenant to pay rent of \$1,300.00 on the first day of every month and a security deposit of \$650.00. On page 1 of the tenancy agreement is a clause entitled "The Term" which states the tenancy is for a fixed term of 12 months starting on March 1, 2016 and ending on February 28, 2017 and "the tenancy will end and the Tenants will vacate the premise on February 28, 2017 or the Tenants will sign a new fixed term agreement upon the Landlord's approval."

The tenant stated that a copy of the tenancy agreement was not provided to her until she received the landlord's evidence package. The landlord testified that a copy of the tenancy agreement was sent to the tenant via email at the beginning of the tenancy.

The tenant acknowledged that the copy of the tenancy agreement provided to me is a copy of the agreement she initialled and signed in February 2016.

The parties executed another document entitled "Addendum to Tenancy Agreement" (the Addendum) on January 5, 2017 and February 2, 2017, that states:

"The Tenant and landlord hereby agree to the following adjustment to the current tenancy agreement dated February 16, 2016.

The fixed term tenancy will not end on February 28, 2017. By tenant's request, and mutual consent, the term will be extended to May 31, 2017. The tenancy will now expire on May 31, 2017."

The tenant argues that the Addendum does not specifically require the tenant to vacate the rental unit on May 31, 2017 and the tenancy continues on a month to month basis thereafter. Further, in order for the landlord to regain possession of the rental unit the landlord would have to give the tenant a Notice to End Tenancy which has not been served upon her, meaning the tenancy remains in effect.

The landlord argues that the Addendum merely extends the date of the fixed term but that the requirement to vacate the rental unit at the end of the fixed term, as provided in the tenancy agreement, remains in effect.

The tenant argued that there was no discussion about a vacate clause before she was presented with the tenancy agreement and she understood that the landlord was looking for a long term tenant when she decided to rent the unit. The tenant pointed out that the vacate clause in the tenancy agreement was not initialled by the parties. The tenant submitted that the tenancy agreement also contains terms that are not compliant with the Residential Tenancy Act.

The landlord responded by stating the landlord is not required to give the tenant notice to end tenancy because the tenant must vacate the unit upon expiry of the fixed term. The landlord pointed out that it is the tenant that is actually required to give the landlord a notice to end tenancy. The landlord pointed to page 9 of the tenancy agreement that provides general terms that are "mutually agreed between the parties" and in particular term 4) d) i) of the tenancy agreement which provides, in part:

"The tenancy created hereby will terminate on completion of the 12 month fixed term, provided the Tenant gives a minimum of 1 months' notice in writing stating

the Premises address, move out date, reason for departure and it be signed and dated by the Tenant....The Premises must be vacated, cleaned and ready for inspection by 1 pm on the termination date.”

The tenant submitted that the above described term is inconsistent with a fixed term tenancy agreement that has a vacate clause since a vacate clause would not require the tenant to give notice to end the tenancy.

The landlord explained that the above described term was inserted since the tenancy agreement provides that the tenancy could continue if another fixed term agreement was entered into.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

Section 13 of the Act provides for the terms and information that must be contained in a tenancy agreement, including:

- (iii) if the tenancy is a fixed term tenancy,
 - (A) the date the tenancy ends, and
 - (B) whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date;

Upon review of the tenancy agreement, I find it is clear that the tenancy was originally to be for a fixed term expiring on February 28, 2017. Section 14 of the Act permits parties to amend or change a term in a tenancy agreement by mutual agreement and upon review of the Addendum, I am satisfied that there was mutual agreement to change the expiry date of the fixed term from February 28, 2017 to May 31, 2017. The issue to determine is whether the tenancy ends on May 31, 2017 and the tenant was required to vacate the rental unit on that date.

Although the Addendum does not specifically state the tenancy would end on May 31, 2017 and the tenant would have to vacate the rental unit, I find the wording of the Addendum is sufficiently clear that the parties were merely changing the expiry date of the fixed term; meaning, the other provisions in the tenancy agreement remained

unchanged. Accordingly, I proceed to consider whether the tenancy agreement clearly communicates that the tenancy ends upon expiry of the fixed term and whether the tenant must vacate the rental unit by that date.

Section 6 of the Act provides that a term in a tenancy agreement must clearly communicate the rights and obligations under it. If a term is not expressed in a manner that clearly communicates the rights and obligations under it, the term is not enforceable. Section 6 provides as follows:

Enforcing rights and obligations of landlords and tenants

- 6** (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.
- (2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) [*determining disputes*].
- (3) A term of a tenancy agreement is not enforceable if
- (a) the term is inconsistent with this Act or the regulations,
 - (b) the term is unconscionable, or
 - (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

In this case, I find “The Term” on page 1 of the tenancy agreement clearly communicates that the tenancy ends on the expiry date of the fixed term and the tenant must vacate the rental unit upon expiry of the fixed term, unless another fixed term agreement is entered into. I also find the parties did not enter into another fixed term tenancy agreement but merely extended the fixed term expiry date by way of the Addendum. Accordingly, if I were to rely upon “The Term” only I would find the tenant was required to vacate the rental unit by May 31, 2017, as amended by mutual consent. However, I find term 4) d) i) of the tenancy agreement is inconsistent with the above described term since section 4 d) i) puts an obligation on the tenant to give one month of written notice to the landlord in order to terminate the tenancy. The tenant has not given the landlord one month of written notice to terminate the agreement. Accordingly, if I were to rely upon term 4 d) i) I would find the tenancy has not yet terminated. Term

4) d) ii) of the tenancy agreement also provides that “the landlord may end the tenancy in accordance with the terms of the Residential Tenancy Act”. There are several reasons for a landlord to end a tenancy under the Act, such as where a tenant fails to pay rent or gives the landlord cause to end the tenancy or where there is a vacate clause at the end of the fixed term tenancy. I find the intention of 4 d) ii) is not clear and it could conflict with term 4 d) i). As I stated to the parties during the hearing, I am of the view that if there is a fixed term tenancy with a vacate clause, it is not necessary to provide for how the tenancy comes to an end or a requirement for either party to give notice to end tenancy and I find that terms 4) d) i) and ii) create an ambiguity. Therefore, I am of the view there are inconsistent and ambiguous terms in the tenancy agreement as to how the tenancy will come to an end.

Having found the tenancy agreement contains inconsistent and ambiguous terms with respect to how the tenancy will end, I turn to the common law. Section 91 of the Act provides that the common law applies to disputes involving landlords and tenants unless modified or varied under the Act.

One rule of contract interpretation is referred to as the *Contra Proferentem* (“against interest”) rule which is often useful when interpreting contracts where there is an inequality of bargaining power; for instance when dealing with a commercial landlord’s contract of adhesion, which is effectively a “take it or leave it” contract. This rule provides that where there is any ambiguity in the contractual provision it will be interpreted in the manner that is least favourable to the maker of the contract.

Tenancy agreements are required to be drafted by landlords under the Act and the tenancy agreement before me was drafted by the landlord. The tenant argued that she understood that the landlord was looking for a long term tenant and she had not anticipated moving one year after the tenancy started and that the tenancy agreement was presented to without prior discussion of a vacate clause. Accordingly, I find it appropriate that any ambiguity in the tenancy agreement will be interpreted in a manner that is least favourable to the landlord and to the benefit of the tenant under the rule of *Contra Proferentem*. In keeping with the rule of *Contra Proferentem*, since term 4 d) i) requires that the tenant to give notice to terminate the tenancy and the tenant has not given notice, I find the tenancy has not terminated.

Having found the tenancy has not terminated, I order that the tenancy shall continue on a month to month basis until such time it is ended. In order to end the tenancy, one party will have to give the other party a notice to end tenancy or the parties may agree to end the tenancy by mutual consent and execute a Mutual Agreement to End

Tenancy. Any notice to end tenancy given must comply with the requirements of the Act. A tenant's notice must comply with section 45 of the Act. A landlord must issue a Notice to End Tenancy in one of the approved forms for one of the reasons permitted under sections 46 through 49 of the Act.

Since I have found the tenancy continues at this time, I dismiss the landlord's request for an Order of Possession.

Having found in favour of the tenant, I award the tenant recovery of the \$100.00 filing fee she paid for her Application. The tenant is authorized to deduct \$100.00 from a subsequent month's rent in satisfaction of this award.

Conclusion

The tenancy continues on a month to month basis.

The tenant is awarded recovery of the filing fee and has been authorized to deduct \$100.00 from a subsequent month's rent.

The landlord's application is dismissed entirely.

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: July 18, 2017

Residential Tenancy Branch