



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB FF

Introduction

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

- an Order of Possession based on the expiration of a fixed-term tenancy pursuant to section 55 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenants were represented at the hearing by agent, A.A. (the "tenant"), while the landlords were represented at the hearing by landlord B.S. (the "landlord").

The tenant acknowledged receipt of the landlords' application and evidentiary package on June 8, 2017. Pursuant to section 88 & 89 of the *Act*, the tenants are deemed to have been served with the landlords' application and evidentiary package.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession based on the expiry of a fixed-term tenancy?

Are the landlords entitled to a return of the filing fee?

Background and Evidence

During the course of the hearing, the landlord explained that this tenancy was the second fixed-term tenancy which the parties had entered into. The first fixed-term tenancy began on July 1, 2015 and ended on June 30, 2016. Rent was \$1,795.00 per month and a security deposit of \$897.50 collected by the landlords at the outset of the

tenancy continues to be held by the landlords. A copy of this tenancy was produced at the hearing as part of the landlords' evidentiary package.

The landlord provided testimony which was disputed by the tenant that a second fixed-term tenancy had been signed by the parties. He stated that the parties entered into a second agreement on July 1, 2016 which was set to expire on June 30, 2017. Rent for this tenancy was \$1,850.00.

The tenant explained that he did not know what type of tenancy the parties had entered into but he disputed that it was a fixed-term tenancy. He said, "I don't believe it is a fixed-term tenancy." The tenant continued by explaining that the landlords had refused to provide him a copy of the lease, and the landlords had proposed to the tenants a rental increase to \$2,450.00. In addition, the tenant explained that the landlords had also proposed a reconfiguration of the home whereby the bottom suite would be rented out separately to new tenants.

Analysis

Section 55(2)(c) of the *Act* explains, "A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution when 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."

Under the definitions section of 1 of the *Act*, a Fixed-Term Tenancy is defined as, "A tenancy under a tenancy agreement that specifies the date on which the tenancy ends." The requirements for a Fixed-Term Tenancy are described in section 13 of the *Act* which explains;

A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

- (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.

The issue of Fixed-Term tenancies is discussed further in *Residential Tenancy Policy Guideline #30*. It says, “a fixed term tenancy is a tenancy where the landlord and tenant have agreed that the tenancy agreement will begin on a specified date and continue until a predetermined expiry date...Fixed term tenancy agreements must state the date the tenancy ends, and 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 at the end of the fixed term.”

Without a copy of the Fixed-Term Tenancy Agreement signed between the parties, I find that I cannot verify its form and content as described above. When a landlord is seeking an Order of Possession the burden of proof is placed on the landlord to show why they are entitled to such an Order. I find that the tenants have raised sufficient doubt as to the nature of this tenancy, that the landlords have failed to produce a copy of the Fixed-Term Tenancy agreement and that the landlords have therefore not met the burden of proof required to be granted an Order of Possession.

As the landlords` were unsuccessful in their application, they must bear the cost of their own filing fee.

Conclusion

The landlords` application for an Order of Possession is dismissed. This tenancy shall continue 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: August 29, 2017

Residential Tenancy Branch