



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding ADVANCED PROPERTY MANAGEMENT INC. (AGENT)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPB FF CNC

Introduction:

Both parties made Applications and both attended and gave sworn testimony. The tenant agreed they received each other's Applications for Dispute Resolution. I find that the parties were legally served with the documents according to sections 88 and 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order of Possession pursuant to Sections 44, and 55 as the tenant has breached a term of the fixed term tenancy agreement by not vacating as agreed; and
- b) An order to recover the filing fee pursuant to Section 72.

The tenant applies to cancel the Notice to End Tenancy.

Issue(s) to be Decided:

Is the landlord entitled to an Order of Possession? Or is the tenant entitled to any relief?

Background and Evidence:

Both parties attended and were given a brief opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced October 1, 2016 on a fixed term to September 30, 2016. Rent is \$1600 a month plus \$200 in utilities. A security deposit of \$800 was paid.

The landlord said the tenants have not vacated on September 30, 2017 as the lease required and she requests an Order of Possession. The tenant said it is very hard to find accommodation in the tight rental market.

On the basis of the solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Order of Possession

I find that the landlord is not entitled to an Order of Possession. I find the tenants did not initial the box in section 2 of the tenancy agreement that provides they must move out at the end of the fixed term. I find the landlord is not entitled to an Order of Possession based on the end of the fixed term set out in the lease for this reason.

Secondly, as I informed the landlord, recent legislative changes will prohibit enforcement of this clause even if initialled. The summary of information I have received is as follows:

The changes to the law around the use of vacate clauses in fixed term tenancy agreements will apply to all tenancy agreements that are in effect on the date the changes come into force with only a few exceptions. This means that a landlord will not be able to enforce a vacate clause in an existing agreement except:

- 1. if the tenancy agreement is a sublease agreement,*
- 2. if the circumstances set out in the regulations apply, or*
- 3. **if, before October 26, 2017** (the day the bill received First Reading in the Legislative Assembly):*
 - the landlord entered into a tenancy agreement, to begin after the expiry of an existing tenancy agreement that includes a requirement to vacate the rental unit, with a new tenant for the rental unit, or*
 - the director granted an order of possession to the landlord on the basis of a requirement to vacate the rental unit in an existing tenancy agreement.*

All of the other changes in the new legislation will apply to tenancy agreements that are entered into on or after the date the change in question comes into force.

I dismiss the tenant's application as it is not relevant in the circumstances. I advised the tenant of the provisions of sections 46 and 47 relating to Notices to End Tenancy for unpaid rent and for cause which will still be legal notices to end a tenancy after the provisions in the new legislation receive Royal Assent.

Conclusion:

I find the landlord is not entitled to an Order of Possession as the lease did not provide for vacant possession at the end of the fixed term. I dismiss the application of the landlord and find her not entitled to recover filing fees due to lack of success.

I dismiss the application of the tenant also.

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: November 22, 2017

Residential Tenancy Branch