



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for an Order of Possession pursuant to section 55.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package ("Application") as well as the evidence package. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the Application and landlord's evidence. The tenant did not submit any written evidence for this hearing.

Issues to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this hearing and my findings are set out below.

This two month, fixed term tenancy began on October 1, 2017, with monthly rent currently set at \$2,000.00 which is payable on the first day of each month. This tenancy ended on November 30, 2017, but the tenant continues to reside in the rental unit. A copy of the tenancy agreement was included in the evidence, which was signed by both parties.

The landlord testified in the hearing that he wished to demolish the rental home now that the tenancy has now ended. Both parties acknowledged in the hearing that the

landlord had not issued any Notices to End Tenancy to the tenant. The landlord confirmed that the tenant has paid December 2017 rent, and a receipt was issued indicating the payment was for “use and occupancy only”.

Analysis

Residential Tenancy Policy Guideline #30 addresses fixed term tenancies. Effective December 11, 2017, a tenancy agreement may only include a requirement that the tenant vacate the rental unit at the end of a fixed term only in specific circumstances.

Subsection G of Residential Tenancy Policy Guideline #30 addresses the circumstances when a landlord may apply for an Order of Possession as summarized below:

G. ORDERS OF POSSESSION AND FIXED TERM TENANCIES

In addition to the procedures under the Legislation for terminating a tenancy for cause or for non-payment of rent, a landlord may apply for an Order of Possession in respect of a fixed term tenancy when any of the following occur:

- a) the tenant has given proper notice to the landlord as a result of a material breach by the landlord;
- b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy for one of the following reasons:
 - i) the tenancy agreement is a sublease agreement; or
 - ii) the tenancy is a fixed term tenancy in circumstances prescribed in section 13.1 of the Residential Tenancy Regulation;
- c) the landlord and tenant have entered into a written agreement specifying that the tenancy agreement shall end on a specified date.

As noted in the Policy Guideline *“Transitional provisions in the Legislation apply this change retrospectively. If a fixed term tenancy agreement is currently in effect and contains a clause that requires a tenant to vacate the rental unit or manufactured home site on a specified date, that clause is no longer enforceable in most circumstances.”*

As such, this policy guideline retroactively applies to the current tenancy agreement between both parties.

I find that the landlord has not given the tenant any notices to end this tenancy, nor does the tenancy agreement meet any of the provisions prescribed in section 13.1 of the Residential Tenancy Regulation. There is no written, mutual agreement to end this tenancy. As the landlord’s application for an Order of Possession does not meet any of the requirements as outlined in subsection G above, I dismiss the landlord’s application

for an Order of Possession with respect to this fixed term tenancy. The tenancy is to continue on a month-to-month basis until ended in accordance with the *Act*, regulation, and tenancy agreement.

Conclusion

The landlord's application is dismissed without leave to reapply. This tenancy is to continue until ended in accordance with the *Act*, regulation, or tenancy agreement.

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: December 27, 2017

Residential Tenancy Branch