



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* ("Act").

The landlord sought:

- an Order of Possession based on the vacate clause in a fixed term tenancy agreement pursuant to section 55; and

The landlord's agent (the landlord), the building manager and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. The tenant had an advocate who stated that they would be speaking on behalf of the tenant.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord testified that they served the Application for Dispute Resolution (the Application) and evidence to the tenant by way of registered mail. The tenant acknowledged receipt of the Application and evidence. In accordance with sections 88 and 89 of the *Act*, I find the tenant was duly served with the Application and evidence.

The landlord acknowledged receipt of the tenant's evidence which was served by way of registered mail on December 22, 2017. In accordance with section 88 of the *Act*, I find the landlord was duly served with the tenant's evidence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based a fixed term tenancy agreement?

Background and Evidence

Written evidence was provided that this fixed term tenancy began on July 01, 2017, with a clause initialled by the tenant to vacate the rental unit on September 30, 2017. The tenancy agreement indicates a monthly rent of \$900.00, due on the first day of each month. The landlord confirmed that they continue to retain a security deposit in the amount of \$300.00. The advocate submitted that there was another fixed term tenancy agreement prior to this one that commenced on May 01, 2017.

The landlord testified that the tenant signed a fixed term lease and was required to vacate the rental unit on September 30, 2017.

The advocate submitted that the landlord has been accepting the monthly rent from the tenant and has not issued any receipts which indicated that the rent is for use and occupancy only. The advocate stated that the vacate clause is no longer enforceable as of the changes to the legislation as of October 26, 2017.

Analysis

Section 44 (1) (b) of the *Act* states that a tenancy ends only if the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term.

Section 97 (2) (a.1) of the *Act* stipulates that the Lieutenant Governor in Council may make regulations prescribing the circumstances in which a landlord may include in fixed term tenancy agreement that a requirement that the tenant vacate a rental unit at the end of the term. Residential Tenancy Policy Guideline #30 for Fixed Term Tenancies states:

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 if the tenancy agreement is a sublease agreement.

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 on a specified date, that clause is no longer enforceable in most circumstances.

The Legislation allows for limited circumstances where a vacate clause in a tenancy agreement is enforceable:

- *The tenancy agreement is a sublease agreement; or*
- *If one of the following occurred before October 26, 2017:*

- (i) *the landlord entered into a tenancy agreement, to begin after the expiry of an existing agreement that includes a requirement to vacate the rental unit, with a new tenant for the rental unit, or*
- (ii) *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*

I find that the tenancy is not a sublease agreement as the fixed term tenancy agreement is only between the landlord and the tenant without any other parties involved.

I further find that the landlord has not provided any evidence or testimony that there is another tenant who has signed a tenancy agreement for the rental unit before October 26, 2017, that was to begin after the expiry of the existing agreement between the landlord and the tenant.

For the reasons set out above, I find that the vacate clause in the fixed term tenancy agreement is unenforceable. This tenancy continues until ended in accordance with the *Act*.

Conclusion

The landlord's Application is dismissed, without leave to reapply.

This tenancy continues until 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: January 10, 2018

Residential Tenancy Branch