



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking an Order of Possession for a breach of a fixed-term tenancy with a vacate clause, and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Agent”), the Tenant, and the advocate for the Tenant (the “Advocate”), all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of documentary evidence or the Application and Notice of Hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Residential tenancy Branch Rules of Procedure (the “Rules of Procedure”); However, I refer only to the relevant facts and issues in this decision.

At the request of the Agent, a copy of the decision and any Orders issued in favor of the Landlord will be mailed to the Landlord at the address provided on the Application. At the request of the Tenant, a copy of the decision will be e-mailed to their Advocate at the e-mail address provided in the hearing.

Preliminary Matters

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the “Branch”) under Section 9.1(1) of the *Act*.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to sections 44 and 55 of the *Act*?

Is the Landlord entitled to the recovery of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me, which was signed on September 23, 2017, is a two month fixed-term tenancy agreement with a start date of October 1, 2017, and an end date of November 30, 2017. The tenancy agreement contains a vacate clause initialed by both the Tenant and the Landlord, which is a corporation, indicating that the Tenant agrees to move-out of the rental unit at the end of the tenancy. When the Tenant refused to vacate the property as agreed upon in the tenancy agreement, the Application was filed on behalf of the Landlord seeking to enforce the vacate clause of the fixed-term tenancy.

The Tenant's Advocate testified that the Tenant wishes to rely on the retrospective changes to the *Act* and the regulation which came into force on December 11, 2017, regarding fixed-term tenancies that require a tenant to vacate at the end of the term. The Advocate argued that as a result of these amendments, the vacate clause in the tenancy agreement is unenforceable.

Analysis

Section 44 of the *Act* states that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that, in the 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) states that the Lieutenant Governor in Council may make regulations prescribing the circumstances in which a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate a rental unit at the end of the term. Section 13.1 of the regulations states that for the purposes of section 97(2)(a.1) of the *Act*, a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate the rental unit at the end of the term only if that landlord is an individual, and that landlord or a close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term.

Based on the documentary evidence and testimony before me, I find that the Landlord is a corporation and not an individual. As a result, I find that the clause in the fixed-term tenancy agreement requiring the Tenant to vacate the rental unit on November 30, 2017, is of no force or effect and I therefore dismiss the Landlord's claim without leave to reapply.

As the Landlord was not successful in their Application, I decline to grant them recovery of the filing fee.

Conclusion

The Landlord's Application seeking an Order of Possession for a breach of a fixed-term tenancy agreement with a vacate clause is dismissed without leave to reapply. As a result, I Order that the tenancy continue in full force and effect 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: February 5, 2018

Residential Tenancy Branch