



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPB, FF

Introduction

The Application for Dispute Resolution filed by the landlord seeks the following:

- a. An Order for Possession based on a fixed term tenancy agreement that has come to an end.
- b. An Order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of a representative of the applicant and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

The landlord attempted to serve the Application for Dispute Resolution by registered mail but the tenant failed to pick up the package and it was returned to the landlord. I find that the Application for Dispute Resolution/Notice of Hearing was personally served on Tenant on February 2, 2018.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into two fixed term written tenancy agreements. The last one provided that the tenancy would start on October 1, 2017 and end on February 28, 2018. The rent is \$510 per month payable in advance on the first day of each month. The tenant(s) was not required to pay a security deposit.

The law relating to a fixed term tenancy was changed effective December 11, 2017. As a result of the changes a landlord can only apply for an Order of Possession to end a fixed term tenancy in certain limited situations. Section 55(2) of the Act provides as follows:

Order of possession for the landlord

55 (2) 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:

- (a) a notice to end the tenancy has been given by the tenant;
- (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;
- (c) 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;
- (c.1) the tenancy agreement is a sublease agreement;
- (d) the landlord and tenant have agreed in writing that the tenancy is ended.

Section 97(2)(a.1) of the Act provides as follows:

Power to make regulations

97 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

- (a) exempting tenancy agreements, rental units or residential property from all or part of this Act;
- (a.1) 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 Residential Tenancy Act Regulations provide as follows:

Fixed term tenancy — circumstances when tenant must vacate at end of term

13.1 (1) In this section, "close family member" has the same meaning as in section 49 (1) of the Act.

(2) For the purposes of section 97 (2) (a.1) of the Act [*prescribing circumstances when landlord may include term requiring tenant to vacate*], 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 are that

- (a) the landlord is an individual, and
- (b) 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.

Analysis:

I determined that as a result of the change to the legislation relating to fixed term tenancies the landlord no longer has the right to obtain an Order of Possession based on the end of tenancy date in the tenancy agreement unless it involves a close family member of the landlord moving in or a sublease. That situation does not exist on the facts of this case.

As a result I dismissed the landlord's application without leave to re-apply.

This decision is final and binding on the parties.

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 27, 2018

Residential Tenancy Branch