



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on February 22, 2018 (the "Application"). The Landlord sought an Order of Possession based on a Mutual Agreement to End a Tenancy. The Landlord also sought reimbursement for the filing fee.

The Landlord appeared at the hearing. Due to a language barrier, G.S. appeared at the hearing as representative of the Landlord. G.S. translated for the Landlord when necessary. Both Tenants appeared at the hearing. All parties provided affirmed testimony. The hearing process was explained to the parties and none of the parties had questions when asked. All parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered the oral testimony of all parties but have only referred to the evidence I find relevant in this decision.

The Landlord had submitted insurance papers, photos and a Mutual Agreement to End a Tenancy as evidence. The Tenants had not submitted any evidence. I addressed service of the hearing package and Landlord's evidence. Tenant D.W. confirmed he received the hearing package. The parties disagreed about when the hearing package was provided to the Tenants. Tenant D.W. said he received it at the beginning of April or mid April. I asked Tenant D.W. if he had sufficient time to prepare for the hearing and he said, "yeah I guess so". I find the hearing package was served in time to allow the Tenants to prepare for the hearing and I proceeded with the hearing.

Tenant D.W. said he was not served with the Landlord's evidence. G.S. said Tenant A.K. had been shown the photos submitted and Tenant D.W. had been provided a copy of the completed Mutual Agreement to End a Tenancy. Tenant D.W. said he had not been given a copy of the completed Mutual Agreement to End a Tenancy after he signed it. Pursuant to rule 3.17 of the Rules of Procedure (the "Rules"), I excluded the insurance papers and photos because these were not served on the Tenants, neither tenant had seen the insurance papers and Tenant

D.W. had not seen the photos. Admission of this evidence in these circumstances would have been prejudicial to the Tenants and would have breached the principles of natural justice.

Due to the conflicting evidence of G.S. and Tenant D.W., I was not satisfied that Tenant D.W. had received a copy of the completed Mutual Agreement to End a Tenancy. Tenant D.W. argued that the Mutual Agreement to End a Tenancy should not be admitted because he was never provided a copy of it after he signed it. I told the parties I would accept oral testimony regarding the Mutual Agreement to End a Tenancy. I am not satisfied that Tenant D.W. received a copy of the completed Mutual Agreement to End a Tenancy. I am not satisfied that admitting the completed Mutual Agreement to End a Tenancy would not be prejudicial to the Tenants or breach the principles of natural justice. Therefore, I exclude the Mutual Agreement to End a Tenancy pursuant to rule 3.17 of the Rules.

Issue to be Decided

1. Should the Landlord be issued an Order of Possession based on a Mutual Agreement to End Tenancy?

Background and Evidence

A tenancy agreement was not provided and therefore I had to obtain the details of the tenancy agreement from the parties. Both parties agreed there is a written tenancy agreement that does not include terms beyond the standard terms set out in the *Residential Tenancy Regulation*. Both parties agreed the Landlord is the landlord under the agreement. Both parties agreed that both Tenants are tenants under the agreement. G.S. said the start date of the tenancy was August 18, 2016. Tenant D.W. said the start date was in 2014 or 2015. G.S. said the Landlord did not own the rental unit until 2016. Both parties agreed the tenancy is a month-to-month tenancy. Both parties agreed rent is \$850.00 due on the first day of each month. Both parties agreed that both Tenants signed the agreement although they disagreed about the year it was signed.

G.S. said there was a flood in the basement of the rental address that affected the rental unit. He said the Tenants agreed to vacate the rental unit for emergency renovations. G.S. said he, the Landlord and a third party gave Tenant D.W. a Mutual Agreement to End Tenancy form (the "Form"). G.S. testified about the contents of the Form at the time it was provided to Tenant D.W. G.S. said the Form was obtained from the Branch and was the RTB-#8 form. G.S. said he completed the Form with the Landlord. He said the Landlord was listed as the landlord on the Form. G.S. said both Tenants were listed as tenants on the Form. G.S. said the Form indicated the rental unit address. He said the Form stated the Tenants had to vacate the rental unit by 2:00 p.m. on April 30, 2018. G.S. said the Form was dated February 18, 2018. He said the Form was signed by the Landlord.

G.S. said he told Tenant D.W. to read the Form carefully and sign it. He said Tenant D.W. asked questions about the Form. G.S. said Tenant D.W. signed the Form. G.S. confirmed he saw Tenant D.W. sign the Form. G.S. said they tried to reach Tenant A.K. but could not and that she did not sign the Form. G.S. said he, the Landlord and a third party provided Tenant D.W. with a copy of the completed Form on February 18, 2018.

The Landlord provided oral testimony. Given the language barrier, G.S. translated for the Landlord. I told G.S. to translate my questions and the Landlord's answers without interpreting or adding to either. The Landlord testified about the contents of the Form when it was provided to Tenant D.W. The Landlord said she was named as the landlord on the Form. The Landlord said both Tenants were named on the Form as tenants. The Landlord said the address of the rental unit was on the Form. The Landlord said the Form indicated the Tenants had to vacate the rental unit by April 30, 2018. The Landlord said the Form was dated February 18, 2018. The Landlord said she had signed the Form. The Landlord said she saw Tenant D.W. sign the Form. The Landlord said Tenant A.K. never signed the Form.

Tenant D.W. agreed he signed a mutual agreement to end the tenancy. Tenant D.W. testified about the contents of the mutual agreement when he signed it. He said the mutual agreement looked like it was printed from the Residential Tenancy Branch website. He could not recall if the Landlord's name was on the mutual agreement. He said he was pretty sure both Tenants were listed as tenants on the mutual agreement. When I asked if the rental unit address was on the mutual agreement he said, "probably yes". He said he was not sure whether the mutual agreement said the Tenants had to vacate the rental unit. I asked if he understood he was signing a mutual agreement to end tenancy and he said he did. I asked if he understood that the mutual agreement related to vacating the rental unit and he said he did. He said there was no date on the mutual agreement regarding when the Tenants had to vacate the rental unit. He said the mutual agreement was not signed by the Landlord or dated. He said he never saw the mutual agreement again after he signed it.

I asked Tenant D.W. why he would sign a mutual agreement ending the tenancy with no vacate date on it. He provided the following reasons: he had been in a fight with Tenant A.K.; G.S., the Landlord and a "big dude" showed up and he did not know what else to do; he felt pressured; and the Landlord pressured him. I asked Tenant D.W. to provide me with specific examples of what G.S., the Landlord or the third party did or said to pressure him. He could not provide a specific example.

Tenant D.W. testified about discussions he had with G.S. or the Landlord regarding the Tenants staying in the rental unit while it was renovated and regarding a rent increase if the Tenants stayed. Tenant D.W. said he did not understand that the tenancy was ending after he signed the mutual agreement because of these discussions. I asked Tenant D.W. if there was any further written agreement about the tenancy ending or continuing after he signed the mutual agreement. He said there was no further written agreement but there was a verbal agreement.

In response, G.S. denied that anybody had pressured Tenant D.W. to sign the Form. G.S. agreed there was no further written agreement about the tenancy ending or continuing after the Form was signed. I asked G.S. about the evidence of Tenant D.W. that there were discussions about the Tenants staying in the rental unit while it was renovated and regarding a rent increase after the Form was signed. I found G.S.'s reply to be unclear and confusing although at one point he did say nobody told the Tenants the tenancy could continue after the Form was signed.

The Landlord testified that there was no further written agreement regarding the tenancy after the Form was signed. The Landlord said she did not tell the Tenants that they could stay in the rental unit or that the tenancy could continue after the Form was signed. The Landlord also said that there was a discussion with the Tenants about a rent increase because the Tenants were resisting moving and the Landlord wanted them to move.

Analysis

Section 44(1)(c) of the *Residential Tenancy Act* (the "*Act*") states that a tenancy ends if "the landlord and tenant agree in writing to end the tenancy".

Pursuant to section 55(2)(d) of the *Act*, a landlord can apply for an order of possession of a rental unit if "the landlord and tenant have agreed in writing that the tenancy is ended".

In this case, there is no dispute that Tenant D.W. signed a mutual agreement to end tenancy. Based on the testimony of Tenant D.W., I find he knew the mutual agreement related to vacating the rental unit when he signed it. The dispute relates to what the mutual agreement said when Tenant D.W. signed it. The main disagreement is about whether the mutual agreement included a vacate date, the Landlord's signature and the date of the signatures.

I accept the evidence of G.S. and the Landlord that the mutual agreement stated that the Tenants had to vacate the rental unit by April 30, 2018 when Tenant D.W. signed it. I do not accept the evidence of Tenant D.W. that there was no vacate date on the mutual agreement when he signed it. I do not accept that a tenant would sign a mutual agreement to end their tenancy that did not indicate when the tenancy ended. Tenant D.W.'s assertion that he signed a mutual agreement ending the tenancy with no vacate date on it does not accord with what a reasonable tenant would accept either.

It is irrelevant whether the mutual agreement was signed by the Landlord or dated prior to Tenant D.W. signing it. The absence of the Landlord's signature and the date of the signatures at the time of Tenant D.W. signing has no bearing on whether Tenant D.W. is bound by the mutual agreement to end the tenancy.

I do not accept that Tenant D.W. was pressured to sign the mutual agreement as he could not provide a specific example of G.S., the Landlord or the third party saying or doing anything that I

would find amounted to pressure or coercion. Further, G.S. denied that anybody pressured Tenant D.W. to sign the mutual agreement.

Based on the above, I find Tenant D.W. signed a mutual agreement to end the tenancy on April 30, 2018. I find the Tenants are bound by this agreement. I accept and acknowledge that Tenant A.K. did not sign the mutual agreement; however, this does not change that both Tenants are bound by the agreement. Based on the evidence of both parties, I find the Tenants are tenants under the same tenancy agreement and therefore are joint tenants. When Tenant D.W. signed the mutual agreement, this ended the tenancy for both Tenants.

I acknowledge Tenant D.W. provided evidence about discussions between the Tenants and G.S. or the Landlord regarding the tenancy continuing after the mutual agreement was signed. I found the response of G.S. and the Landlord regarding this to be unclear and confusing. However, G.S. and the Landlord did say that nobody told the Tenants the tenancy could continue. Given my finding that Tenant D.W. signed the mutual agreement ending the tenancy April 30, 2018, it is my view that the onus shifts to the Tenants to prove on a balance of probabilities that an agreement existed between the Landlord and Tenants to continue the tenancy after the mutual agreement was signed. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version. This is what has occurred in this case and therefore I find the Tenants have not satisfied me on a balance of probabilities that there was a further agreement about the tenancy continuing after the mutual agreement was signed.

Given the above, and pursuant to section 44(1)(c) of the *Act*, the tenancy ended April 30, 2018 based on the mutual agreement. The Landlord is entitled to an Order of Possession. Pursuant to section 55(3) of the *Act*, I grant the Landlord an Order of Possession. G.S. agreed that, if I granted the Landlord an Order of Possession, it could be effective at 1:00 p.m. on May 31, 2018.

Given the Landlord was successful in this application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Both parties agreed the Landlord holds a \$425.00 security deposit for the Tenants. Pursuant to section 72(2)(b) of the *Act*, I authorize the Landlord to keep \$100.00 of the security deposit at the end of the tenancy.

Conclusion

The Landlord is entitled to an Order of Possession based on a mutual agreement to end tenancy signed by the Landlord and Tenant D.W. The Order of Possession will be effective at 1:00 p.m. on May 31, 2018. The Order must be served on the Tenants. If the Tenants do not comply with the Order, it may be filed in the Supreme Court and enforced as an Order of that court.

The Landlord is awarded \$100.00 as reimbursement for the filing fee. The Landlord is authorized to keep \$100.00 of the Tenants' security deposit at the end of the tenancy.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: May 11, 2018

Residential Tenancy Branch