



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KELSON GROUP LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC

Introduction

On June 1, 2018, the Tenants applied for a dispute resolution proceeding seeking an Order for the Landlord to Comply with the *Act* pursuant to section 62 of the *Act* and asking to request more time to move, contrary to the Mutual Agreement to End Tenancy that was signed by both parties.

E.D. and R.D. attended the hearing as the Tenants. J.M. attended the hearing as the Property Manager on behalf of the Landlord and V.W. attended the hearing as the Building Manager on behalf of the Landlord. All parties provided a solemn affirmation.

The Tenants confirmed that they served the Notice of Hearing package by hand to V.W. and she acknowledged receipt of this package. As such, and in accordance with sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package.

The Tenants provided into evidence a copy of the Mutual Agreement to End Tenancy and served a copy to the Landlord sometime before June 5, 2018. V.W. confirmed receipt of this evidence. The Landlord did not provide any evidence for this file.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to occupy the rental unit despite the effective end of tenancy date agreed upon in the Mutual Agreement to End Tenancy?

Background and Evidence

J.M. stated that the tenancy started on December 1, 2016 as a fixed term tenancy for one year that continued as a month to month tenancy after the fixed term had expired. Rent was originally established at \$825.00 per month, due on the first day of each month. A security deposit of \$412.50 was paid. The Tenants confirmed these details.

Both Tenants confirmed that they had signed a Mutual Agreement to End Tenancy with the Landlord that was effective on May 31, 2018 at 1:00 PM. Both Tenants advised that they have been searching for a new rental unit to move to but due to the low vacancy rates, they have not been successful in this search. They stated that they made their Application to extend the time frame to vacate and allow them to reside in the rental unit past the effective date in the Mutual Agreement to End Tenancy.

J.M. confirmed that this Mutual Agreement to End Tenancy was signed with the Tenants that was effective on May 31, 2018 at 1:00 PM. J.M. confirmed that she was still seeking an Order of Possession of the premises based on this Mutual Agreement to End Tenancy. She advised that she would be willing to have the Order of Possession effective for July 31, 2018 at 1:00 PM to allow the Tenants more time to vacate the rental unit.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the Act that are applicable to this situation. My reasons for making this decision are below.

I note that Section 55 of the *Residential Tenancy Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that that complies with the *Act*.

However, while an Order of Possession was granted verbally to the Landlord during the hearing, upon further deliberation and review of the *Act*, a Mutual Agreement to End Tenancy would not be considered a notice to end tenancy under the *Act*. As such, an Order of Possession cannot be granted unless the Landlord makes their own Application for the Order pursuant to Section 55.2(d) of the *Act*.

Regardless, I am satisfied that the Landlord and Tenants agreed to mutually end the tenancy on May 31, 2018 at 1:00 PM. Therefore, the Tenants must vacate the rental unit as soon as possible.

Conclusion

The Landlord is at liberty to apply at any time for an Order of Possession should they believe that the Tenants or any occupant on the premises would fail to vacate the rental unit.

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: July 30, 2018

Residential Tenancy Branch