



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EASTVAN PROPERTY MANAGEMENT
(EVPM) and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB, FFL, OLC, FFT

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). Landlord JW (the landlord) applied for:

- an Order of Possession on the basis of an alleged breach of a material term of the tenancy agreement pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant identified both Landlord JW and Landlord EPM (the landlords) in their application for:

- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The landlords did not attend this hearing, although I left the teleconference hearing connection open until 9:42 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

Landlord's Application

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any attendance at this hearing by the landlords, I order the landlord's application dismissed without liberty to reapply.

Tenant's Application

The tenant testified that they sent the landlords a copy of their dispute resolution hearing package and written evidence by registered mail on March 28, 2019. The tenant entered into written evidence a copy of the Canada Post Tracking Number and Customer Receipt to confirm this registered mailing. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were deemed served with this material on April 2, 2019, the fifth day after its registered mailing.

At the commencement of the hearing, the tenant testified that they vacated the rental unit on April 30, 2019, as they did not wish to risk the possibility of receiving a decision at this hearing that would require them to vacate the rental unit within two days.

At the hearing, the tenant still maintained that the landlords had included a provision for landlord's use of the property in the Residential Tenancy Agreement they (the Agreement) signed on March 5, 2018, and a two month fixed term tenancy agreement they signed in March 2019, that contravened the *Act* and the *Regulation* established pursuant to the *Act*. For this reason, the tenant requested the recovery of their filing fee.

Issues(s) to be Decided

Should any orders be made with respect to these applications. Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

On March 5, 2018, the tenant signed a one-year fixed term Agreement) with the landlord for a period that was to run from April 1, 2018 until March 31, 2019. Monthly rent was set at \$1,014.00, payable in advance on the first of each month. This Agreement

included a provision signed by both parties that this tenancy would end on March 31, 2019, to enable a landlord family member to move into the rental unit.

Before the tenancy was to end, the landlord advised the tenant that the tenancy would be ending on March 31, 2019, as per the terms of their Agreement. The tenant requested more time to find another rental unit, and signed a subsequent Agreement with the landlord that was to extend until May 31, 2019, but which was again to enable the landlord's family member to move into the rental unit at the end of that two month term.

The tenant gave undisputed sworn testimony that they ended their tenancy with the landlord's agreement on April 30, 2019. The tenant testified that they paid all of the requested April 2019 rent, and that the landlord has returned their \$487.50 security deposit to the tenant.

Analysis

Section 13.1 of the *Residential Tenancy Branch Regulation* issued pursuant to the *Act* reads in part 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.

Residential Tenancy Policy Guideline 2 provides the following description of the burden of proof the landlord must meet when a tenant raises concerns about the extent to which a landlord is attempting to end a tenancy for landlord's use of the rental unit in good faith.

...If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy...

This Policy Guideline refers to notices to end tenancy issued pursuant to section 49(1) of the *Act*. I find that the wording of section 13.1 of the *Regulation* clearly establishes the same guidance for arbitrators should be used when interpreting provisions included in residential tenancy agreements where a landlord is claiming a tenancy should be ended at the end of a fixed term when the tenant has agreed to vacate the rental unit on a fixed date to enable a family member to move into the rental unit.

In this case, even though the tenant agreed to end their tenancy and vacate the rental unit, the tenant's application and written evidence clearly alerted the landlords to the tenant's claim that the landlords were not acting in good faith in including the provision in their Agreement that the tenant vacate the rental unit at the end of the fixed term for landlord's use of the property for a family member.

In the absence of any evidence from the landlords to refute this portion of the tenant's application and without any sworn testimony to the contrary by the landlords at this hearing, I find that the tenant provided undisputed evidence to successfully question the good faith demonstrated by the landlords in including the provision in the Agreement requiring the tenant to vacate the rental unit at the end of the fixed term. For this reason, I allow the tenant's application to recover their \$100.00 filing fee from the landlords.

As this tenancy has ended, I make no further orders with respect to the tenant's application.

Conclusion

I allow the tenant's application to recover their \$100.00 filing fee from the landlords and issue a monetary Order in the tenant's favour in this amount. The tenant is provided with these Orders in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlord's application is dismissed without leave to reapply.

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: May 06, 2019

Residential Tenancy Branch