



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNDCL-S OPB**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- Authorization to recover the filing fees from the tenant pursuant to section 72;
- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67; and
- An order of possession for breach of a vacate clause pursuant to section 55.

Both the landlord and the tenant attended the hearing. The tenant was assisted by an advocate, TB. The hearing process was explained and parties were given an opportunity to ask any questions about the process. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Issue – service of documents

The landlord testified he does not know the date he served the application for dispute resolution but acknowledges it was not served within the 14-day time frame as required because he suffers from an illness which prevented him from serving it in time. He testified he did not fully read the instructions he was given and believed he had 7 days to serve the application and evidence upon the tenant.

The tenant testified he was served with the landlord's application for dispute resolution package and evidence on August 6, 2019 when it was personally served upon him. The tenant testified he served the landlord with his evidence on August 8, 2019 by taping it to the landlord's door. The tenant testified he wasn't provided with an opportunity to properly respond to the landlord's application and wasn't able to exchange evidence within the 7 days since he was given the application 6 days before the hearing date.

Residential Tenancy Branch Rule 3.17 states:

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the *Act* or Rules 2.5 [*Documents that must be submitted with an Application for Dispute Resolution*], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

I determined that the landlord's evidence was not new and was available at the time his application was made. I took into consideration the landlord's submission that he suffers from illness, however his application was filed on June 24th and Notice of Hearing documents were made available on the same day. Service of the application was delayed by well over 40 days. I am satisfied the landlord had the capacity and the opportunity to provide his evidence to the tenant within 3 days of submitting his application as required by rule 2.5 but failed to do so.

I determined that accepting any other documentary evidence from either party would unreasonably prejudice the other party and result in a breach of the principles of natural justice. Both the parties supplied a copy of the tenancy agreement and I ruled this document would be admitted into evidence. The only other evidence I would consider would be oral testimony of the parties.

Preliminary Issue

The landlord indicated he could not clearly hear the tenant or his advocate during portions of the hearing. He said he had no difficulty in hearing the arbitrator. During the hearing, neither the arbitrator, the tenant or his advocate had difficulty in hearing any of the parties. The hearing continued as I could not determine if the issue was a problem with the landlord's own equipment. The landlord did not request the opportunity to call in using a different phone or seek an adjournment. All parties were given the opportunity to ask for clarification of testimony during the hearing.

Preliminary Issue

The landlord testified that the issue seeking a monetary order was previously resolved and he no longer seeks that order. The landlord asked that that portion of his claim be dismissed. I dismissed that claim at the commencement of the hearing in accordance with rule 6.1 of the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

Should the landlord be granted an order of possession for a breach of a vacate clause pursuant to section 55?

Background and Evidence

A copy of the tenancy agreement was provided by each of the parties as evidence. The fixed one-year tenancy began on June 15, 2018 with an end date of June 15, 2019. At the end of the fixed term, the parties initialled the option that says at the end of the fixed length of time, the tenancy ends and the tenant must move out of the residential unit.

Below that statement, the following box is checked:

Other: *Or May Enter a New Fixed Term.*

The addendum to the tenancy agreement reads:

Tenancy start date: 15 of June 2018, ending June 15th 2019. At the end of a fixed term tenancy the tenant has to move out. A new fixed term of tenancy can follow and be negotiated in advance with rent payment.

The landlord provided the following testimony. When the tenancy began, it was the tenant who chose the form. The terms of tenancy were negotiated by the tenant. The tenant entered into the contract with all the requirements necessary for a contract. Although he approached the tenant with the opportunity to renegotiate a new fixed term tenancy 6 weeks before the fixed term tenancy was scheduled to end, the tenant refused to sign it. The landlord testified he asked the tenant once again to sign a new fixed term tenancy on July 27th, but the tenant once again refused. No new tenancy agreement was ever signed.

The landlord alleges the tenant is in breach of contract for failing to either enter into a new tenancy agreement or vacate the rental unit. The landlord did not provide any testimony regarding what he intended on doing with the rental unit after the tenant moved out. The landlord provided no evidence about whether he or a close family member was going to move into the rental unit.

The tenant provided the following testimony. The landlord does not have the authority to end a fixed term tenancy or to force him to enter into a new fixed term tenancy at the conclusion of the original term. It becomes a month to month tenancy once the fixed term ends.

Analysis

Residential Tenancy Branch Policy Guideline 30 [PG-30] provides guidance to landlords and tenants specific to Fixed Term Tenancies. The guideline provides the following excerpts:

Effective December 11, 2017, a tenancy agreement may only include a requirement that the tenant vacate the rental unit at the end of a fixed term if: The tenancy agreement is a sublease agreement; or the tenancy is a fixed term tenancy in circumstances prescribed in section 13.1 of the Residential Tenancy Regulation.

For clarity, section 13.1 of the Residential Tenancy Regulations indicates:

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

(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.

Turning back to PG-30,

Requirement to Vacate

A vacate clause is a clause that a landlord can include in a fixed term tenancy agreement requiring a tenant to vacate the rental unit at the end of the fixed term in the following circumstances:

- the 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.

- the tenancy agreement is a sublease agreement.

...

The reason for including a vacate clause must be indicated on the tenancy agreement and both parties must have their initials next to this term for it to be enforceable. The tenant must move out on the date the tenancy ends.

The landlord does not need to give a notice to end tenancy or pay compensation as required when ending a tenancy under section 49. If the tenancy agreement does not require the tenant to vacate the rental unit at the end of the term, and if the parties do not enter into a new tenancy agreement, the tenancy continues as a month-to-month tenancy.

In the case before me, even though the parties initialled the tenancy agreement for it to end at the conclusion of the fixed term; the tenancy agreement does not include the **reason** for the vacate clause. It does not indicate the 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. Likewise, the landlord did not provide any testimony at the hearing or provide any documentary evidence to support that he or a close family member would move into the rental unit.

Neither party gave evidence that the tenancy agreement was a sublease agreement.

Residential Tenancy Regulation 13.1 went into effect on December 11, 2017. The evidence in this hearing shows the tenancy agreement was entered into on June 15, 2018, after the Residential Tenancy Regulation 13.1 was already in effect. Accordingly, the vacate clause in the tenancy agreement has no force or effect.

Further, as there is no indication on the tenancy agreement of the **reason** for ending the tenancy, and due to the insufficient evidence before me to show that the landlord intended on moving either himself or a close family member into the rental unit at the end of the fixed term in accordance with section 13.1 of the Regulations, I dismiss the landlord's application for an Order of Possession for a breach of the vacate clause on the tenancy agreement.

As a new tenancy agreement was not signed by the parties at the conclusion of the fixed term, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms as the original tenancy in accordance

with section 44(3) of the *Act*. This tenancy shall continue until it ends in accordance with the *Act*.

The landlord was not successful in his claim and will not recover the filing fee.

Conclusion

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

This tenancy shall continue on a month to month basis 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: August 14, 2019

Residential Tenancy Branch