



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AWM ALLIANCE REAL ESTATE GROUP LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPM, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on February 4, 2020, wherein the Landlord sought an Order of Possession based on a Mutual Agreement to End Tenancy signed on December 30, 2019, as well as recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for teleconference at 9:30 a.m. on April 9, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Tenant was assisted by a translator, A.D.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Tenant confirmed that his given and surnames were inverted on the Landlord's Application. The Landlord's agent confirmed that the Tenant's name was incorrectly noted on the tenancy agreement.

Section 64(3)(c) of the *Act* allows me to amend an Application for Dispute Resolution. I therefore amend the Application to correctly name the Tenant.

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord's Agent testified that the tenancy began December 2014. The monthly rent at that time was \$790.00. The current rent is \$809.75.

The Agent testified as to the circumstances giving rise to the end of the tenancy. He stated that they have had quite a few issues with the Tenant over the last number of years; including:

- The Tenant storing propane tanks in the unit; and,
- the Tenant smoking in the building.

The Agent stated that they had sent warning letters to the Tenant regarding the above. In response, the Landlord received calls from the Tenant's family members to try to work out a solution. The Agent confirmed that he was in contact with the Tenant's family members as he was made aware that the Tenant's English wasn't very good.

The Agent stated that he and the Tenant's family agreed the tenancy would end pursuant to a Mutual Agreement to End Tenancy.

The Agent stated that his building manager dropped off the Mutual Agreement at the rental unit. The Agent testified that the form was returned on December 31, 2019.

The Agent confirmed that to his knowledge no one was there to translate the document for the Tenant.

As to whether the Tenant understood the document, the Agent responded the Tenant didn't have to sign it, and he signed it.

In response the Tenant testified as follows.

The Tenant confirmed that he signed the Mutual Agreement to End Tenancy. He stated that he signed it, but understood it was a document to have him receive his security deposit. He stated that the manager asked him to sign it, and the manager said this was for “damage deposit in case something happens to the unit and your damage deposit can stay here”. The Tenant testified that the manager stood in the door and he signed the document as requested and gave it back to him right away.

The Tenant stated that he did not understand that the Landlord wanted him to move from the rental property. He reiterated that the only document he signed was about his security deposit.

Analysis

Ending a tenancy is a significant request and must only be done in accordance with the *Residential Tenancy Act*. Section 44(1)(c) allows a tenancy to end when a Landlord and Tenant agree in writing to end the tenancy.

After consideration of the testimony an evidence before me and on a balance of probabilities, I find as follows.

Although the Tenant signed the Mutual Agreement to End Tenancy, I find that the Tenant did not agree to end his tenancy.

The Landlord conceded that they communicated with the Tenant’s family as the Tenant had limited command of the English language. It was the Tenant’s family who agreed to end the tenancy, not the Tenant. Despite the Tenant’s limited English skills, the Landlord’s property manager presented the Tenant with a Mutual Agreement to End Tenancy for his signature.

I accept the Tenant’s testimony that when he received the Mutual Agreement from the Property manager, the manager talked to him about his security deposit. As the Mutual Agreement dealt with the end of the tenancy, it is not surprising the Property Manager raised this topic. I also accept the Tenant’s testimony that he did not understand that the document would end his tenancy.

I therefore find the Mutual Agreement to End tenancy is not binding. Accordingly, I dismiss the Landlord’s request for an Order of Possession.

Having been unsuccessful, I also dismiss the Landlord's request to recover the filing fee.

The Tenant was cautioned that this would likely be the only time he would be able to argue that he did not understand a legal document, and that it was his responsibility to have those documents translated.

Conclusion

The Landlord's request for an Order of Possession and recovery of the filing fee is dismissed.

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: April 09, 2020

Residential Tenancy Branch