



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

This hearing dealt with the Tenant's application filed under the Residential Tenancy Act (the "Act"), requesting an Order for the Landlord to comply with the Act. The matter was set for a conference call.

One of the Landlords (the "Landlord"), the Tenant, and the Tenant's Advocate (the "Tenant") attended the hearing and were each affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

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.

Issue to be Decided

- Should the Landlord be ordered to comply with the Act?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, this tenancy has been a series of six-month fixed-term tenancy, with the latest tenancy agreement

beginning on October 1, 2019. The tenancy agreement recorded the rent at \$860.00 per month and that a security deposit had been paid to the Landlord in the amount of \$422.50. Both the Landlord and the Tenant submitted a copy of the current tenancy agreement into documentary evidence.

The Tenant testified that the Landlord had included a move-out clause in the tenancy agreement and that they were trying to force the Tenant to vacate the rental unit for renovations, under that term of their contract. The Tenant testified that they do not wish to leave the rental unit and that they believe that the move-out clause in their tenancy agreement is not permitted under the *Act*. The Tenant is requesting that the Landlord be ordered to comply with the *Act* and allow the fix-term tenancy to roll into a month-to-month tenancy as required by the *Act*.

The Landlord testified that the Tenant had been advised that the Landlord was planning to conduct major renovations to the rental property and that they both willingly entered into a fixed-term tenancy, which included a move out clause, to allow the Landlord to end the tenancy in order to conduct the renovation. The Landlord argued that the move out clause should be enforceable, as the two parties had verbally agreed to it and had signed a contract which included that term.

Analysis

Based on the above, the oral testimony and the documentary evidence, and on a balance of probabilities, I find as follows:

The parties before me are in dispute regarding the validity of a vacate clause that had been contracted to in their tenancy agreement. Section 13 of the *Act* sets out the requirements of what must be included in a tenancy agreement and states the following:

Requirements for tenancy agreements

13 (1) *A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.*

(2) *A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:*

(a) the standard terms;

(b) the correct legal names of the landlord and tenant;

(c) the address of the rental unit;

- (d) the date the tenancy agreement is entered into;*
- (e) the address for service and telephone number of the landlord or the landlord's agent;*
- (f) the agreed terms in respect of the following:*
 - (i) the date on which the tenancy starts;*
 - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;*
 - (iii) if the tenancy is a fixed term tenancy, the date on which the term ends;*
 - (iii.1) if the tenancy is a fixed term tenancy in circumstances prescribed under section 97 (2) (a.1), that the tenant must vacate the rental unit at the end of the term;***
 - (iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;*
 - (v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;*
 - (vi) which services and facilities are included in the rent;*
 - (vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.*

Section 13 (2) states that a vacate clause may be included in a tenancy agreement but that that the clause must comply with the requirements prescribed in the Residential Tenancy Regulation (the "Regulation"). I accept that testimony of these parties, that the vacate clause was included in this tenancy agreement to allow of renovations to the rental property. Section 13.1 of the Regulation sets out the conditions in which a tenancy agreement may include a vacate clause, stating the following:

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.

As the vacate clause in this tenancy agreement was included for renovations and not to allow the Landlord or their family to move into the rental unit, I find that the Landlord breached section of the 13.1 Regulation when they included this term in the agreement. Section 5 of the *Act* states the following regarding attempts to contract contrary to the *Act* or the Regulation:

This Act cannot be avoided

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

I find that the Landlord has attempted to contract outside of the legally allowable reason for a vacate clause as set out by Regulation. Consequently, I find that the term in this tenancy agreement regarding the requirement to vacate the rental unit at the end of the fixed term to be of no effect.

I grant the Tenant's request, and I order the Landlord to comply with the Act and the Regulation and to make no further attempts to contract contrary to the Act or the Regulation.

Conclusion

I find that the move-out clause, included in this tenancy agreement to be in breach of the *Act* and Regulation, and to be of no effect.

I order to the Landlord to comply with the *Act* when writing their tenancy agreements and to make no further attempts to contract contrary to the *Act* or Regulations.

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 1, 2020

Residential Tenancy Branch