



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPM, FFL**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession for failure to vacate as agreed pursuant to an agreement to vacate under sections 46 and 55;
- Authorization to recover the filing fee for this application pursuant to section 72.

The parties attended and were given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the parties with an opportunity to ask questions. The parties did not raise any issues regarding the service of evidence. HJ translated for his father, the landlord, who also provided affirmed testimony.

I have only considered and referenced in the Decision relevant evidence submitted in compliance with the Rules of Procedure to which I was referred.

Issue(s) to be Decided

Is the landlord entitled to:

- An order for possession for failure to vacate as agreed pursuant to sections 46 and 55;

- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The landlord provided the following uncontradicted testimony. The tenancy began on July 1, 2019 for monthly rent of \$2,750.00 payable on the first of the month. The tenant provided a security deposit of \$1,375.00 which the landlord holds. The landlord submitted a copy of the signed tenancy agreement.

The landlord purchased the unit on March 1, 2020. The landlord and his family want the tenant to move out so they can move in.

The tenancy is a fixed term tenancy ending on June 30, 2020. Box “D” is checked which states:

At the end of this time, the tenancy will continue on a month-to-month basis, or another fixed length of time, unless the tenant gives notice to end tenancy at least one clear month before the end of the term.

On March 1, 2020, the parties signed before a witness a 3-paragraph document titled “Addendum to Tenancy Agreement” (not in the RTB form) which states as follows:

3. TENANT will vacate the rental unit on the end date of tenancy.

The parties agreed that the tenant has never given notice to end the tenancy. The tenant expressed a desire to remain in the unit.

The landlord claimed that the tenant promised to move out in the above “Addendum” and requested an Order of Possession. The tenant denied that he can be forced to move out.

Analysis

Section 44(1) of the Act lists fourteen categories under which a tenancy may be ended and states (emphasis added).

How a tenancy ends

44(1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 [*tenant's notice*];
- (i.1) section 45.1 [*tenant's notice: family violence or long-term care*];
- (ii) section 46 [*landlord's notice: non-payment of rent*];
- (iii) section 47 [*landlord's notice: cause*];
- (iv) section 48 [*landlord's notice: end of employment*];
- (v) section 49 [*landlord's notice: landlord's use of property*];
- (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
- (vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended;
- (g) the tenancy agreement is a sublease agreement.

In this case, the tenancy agreement states it continues on a monthly basis after the end of the fixed term and ends when the tenant gives one-month notice. The tenant has not given any notice. Therefore, the tenancy is ongoing.

The Addendum does not apply to this situation as it states that the tenant “*will vacate the rental unit on the end date of tenancy*”. As the tenant has not ended the tenancy, there is no requirement on the tenant to vacate.

I find the parties’ tenancy agreement allowed the tenant to remain in the unit unless he gives one month’s notice. As agreed between the parties, the tenant has not given notice.

In conclusion, I find the tenancy is ongoing and the landlord is not entitled to an Order of Possession. I dismiss the landlord’s claim without leave to reapply.

Conclusion

I dismiss the landlord's claim 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: July 23, 2020

Residential Tenancy Branch