



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANADIAN NATIONAL RELOCATION and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPT, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on September 2, 2020 (the "Application"). The Tenants applied for an order of possession, pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant T.K., the Landlord, and the Landlord's Counsel C.S. attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to 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(s) to be Decided

1. Are the Tenants entitled to an order of possession, pursuant to Section 54 of the Act?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on September 1, 2019. The Tenants were required to pay rent in the amount of \$9,500.00 to the Landlord each month. The Tenants paid a security deposit in the amount of \$5,000.00, which the Landlord continues to hold.

The parties agreed that the tenancy was a fixed term tenancy until August 31, 2020. The parties agreed that the Tenants were permitted to sublease the rental unit during

the tenancy. The parties agreed that they signed a Mutual Agreement to End Tenancy on September 13, 2019 with an effective date of August 31, 2020.

The Tenant stated that the Landlord was not permitted to have the Tenant sign the Mutual Agreement to End Tenancy as fixed term agreements are meant to continue on a month to month basis after the expiry of the fixed term. The Tenant acknowledged that he signed the Mutual Agreement to End Tenancy on September 13, 2019, however, he stated that it was done under duress. The Tenant stated that the Landlord has refused him access to the rental as of September 1, 2020, deactivating the fobs to gain entry to the rental property. Furthermore, the Tenant stated that the Landlord has removed his possession from the rental unit. The Tenant is seeking an order of possession to regain access to the rental unit as he intends on continuing the tenancy on a month to month basis.

The Landlord's counsel responded and submits that the tenancy agreement was signed between the parties on September 1, 2019. The Landlord's counsel stated that the Mutual Agreement to End Tenancy was signed between the parties on September 13, 2019 and that there was no obligation for the Tenant to sign, however, the parties both signed the Mutual Agreement to End the Tenancy with an effective date of August 31, 2020.

The Landlord's counsel submits that the Landlord made several attempts at contacting the Tenants in relation to the end of the tenancy expectations and to schedule a move out inspection. The Landlord provided copies of the notices which were sent on July 13, August 14, and August 26, 2020. The Landlord's counsel stated that the notices were sent via email, and registered mail. The Landlord provided copies of the registered mail receipt and emails in support. The Tenant denies having received any of the Landlord's notices.

The Landlord's Counsel stated that the sub tenant moved out of the rental unit on August 31, 2020 in compliance with the Mutual Agreement to End Tenancy. The Landlord's counsel stated that there was some furniture left behind in the rental unit, therefore, the Landlord hired a professional mover to move the items to storage where they are currently being kept. The Landlord's counsel stated that the Tenants are not entitled to the rental unit beyond August 31, 2020, and that the Landlord has started a new tenancy with a new tenant effective September 1, 2020.

Analysis

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

Section 54 (1) of the Act states;

A tenant who has entered into a tenancy agreement with a landlord may request an order of possession of the rental unit by making an application for dispute resolution.

(2) The director may grant an order of possession to a tenant under this section before or after the date on which the tenant is entitled to occupy the rental unit under the tenancy agreement, and the order is effective on the date specified by the director.

(3) The date specified under subsection (2) may not be earlier than the date the tenant is entitled to occupy the rental unit.

Section 44 of the Act states;

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.

(2) *[Repealed 2003-81-37.]*

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

In this case, I accept that both parties agreed that they came together on September 13, 2019 and signed a Mutual Agreement to End Tenancy Effective August 31, 2020. While the Tenant stated that he signed the agreement under duress, I find that the Tenant provided insufficient evidence to support this notion. I find that it is the Tenants' responsibility to read the Notice he is agreeing to prior to signing it. I find that the Mutual Agreement to End Tenancy clearly indicates that the parties are agreeing to end the tenancy on the effective date, and that the Tenants had an opportunity to dispute the end of the tenancy prior to the effective date of the Mutual Agreement.

I find that the Mutual Agreement complies with the requirements for form and content and I find that the tenancy ended on August 31, 2020 as agreed upon by the parties based on the Mutual Agreement. As such, I find that the Tenants are no longer entitled to occupy the rental unit, therefore, I dismiss the Tenants' Application without leave to reapply. As the Tenants' were unsuccessful with their Application, I find that they are not entitled to the return of the filing fee.

Conclusion

The Tenants are no longer entitled to occupy the rental unit based on the Mutual Agreement to End Tenancy with an effective date of August 31, 2020. As such, I dismiss the Tenants' Application 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: September 14, 2020

Residential Tenancy Branch