



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, CNC, OLC, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant seeking remedy under the *Residential Tenancy Act* (Act).

The landlord's application is seeking orders as follows:

1. For an order of possession based on a mutual agreement to end the tenancy;
and
2. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a One Month Notice to End Tenancy for Cause;
2. To have the landlord comply with the Act; and
3. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions. The parties confirmed they were not making a prohibited recording of this hearing.

At the outset of the hearing I clarified the tenant's application to cancel a One Month Notice to End Tenancy for Cause. It was confirmed that the tenant did not receive a notice to end tenancy; however, was disputing the mutual agreement to end tenancy, which is the subject of the landlord's application.

Issues to be Decided

Is the Mutual Agreement to End Tenancy valid?
Is the landlord entitled to an order of possession?
Should the landlord be ordered to comply with the Act?

Background and Evidence

The tenancy began on March 1, 2019 for a one-year fixed term tenancy that was to expire on February 29, 2020. Rent in the amount of \$1,500.00.00 was payable on the first of each month. A security deposit of \$750.00 was paid by the tenant.

On March 13, 2020, a new fixed term agreement was made, which was to start on April 1, 2020 and expire on March 31, 2021. The tenancy agreement states that the tenant must vacate the premises at the end of the fixed term, due to a mutual agreement to end the tenancy. Rent in the amount of \$1,500.00 was payable on the first of each month. The security deposit paid by the tenant on February 8, 2019 was applied.

Clause 8 of the above agreement reads as follows:

“MUTUAL AGREEMENT TO END TENANCY – the tenants are fully aware that this lease will terminate. It was advertised, communicated verbally and also reminded during the showing of the property. The tenants have agreed to this Mutual Agreement to End Tenancy to the fact that this lease MUST end. The tenants are fully aware of the terms of this agreement and agreed to them.”

The landlord's agent testified that because this was a new tenancy to commence on April 1, 2020, it is their practice to place the tenant on probation. The agent stated that they write in the addendum to the tenancy agreement a clause to mutually end the tenancy and also make the tenant sign a mutual agreement to end the tenancy should the relationship not work. The agent stated that the tenant signed the new tenancy agreement and signed a mutual agreement to end the tenancy.

I asked the landlord's agent at the hearing, if they informed the tenant at the time that there was no requirement for the tenant to sign a new tenancy agreement because the original agreement would automatically revert to a month-to-month basis. The agent stated that they never gave the tenant the option.

The tenant testified that they have been living in the premises since 2019. The tenant stated that when the new tenancy agreement was presented that they were told they had no option but to sign it. The tenant stated that they signed the agreement; however, they informed the landlord that they did not want to move at the end.

The tenant testified that the landlord was willing to enter into a new fixed term tenancy agreement for a higher rent, with another mutual agreement to end the tenancy. The tenant stated that they did not want to sign another agreement, where they were ending the tenancy.

The advocate for the tenant submits that the landlord is not following the Act, as they can only have a vacate clause in the tenancy agreement that complies with section 13.1 of the Regulations, which is for landlord's use of property. The advocate submits the landlord is abusing the process by forcing tenants to sign mutual agreements to end the tenancy when they enter into the tenancy agreement.

The advocate for the tenant submits that the landlord is also not following the Residential Tenancy Branch Policy Guideline 30, as they can only increase the rent in accordance with the Act, when entering into a new fixed term tenancy. The advocate submits the landlord is abusing the process by forcing tenants to sign mutual agreement to end the tenancy and are only enforcing them when the tenant does not agree to pay the rent increase.

Analysis

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

In this matter, I reject the landlord's agents position that this was a new landlord and tenant relationship, when they entered into a second fixed term agreement with the tenant on March 13, 2020. The tenant had been living in the premises for one year and the owners had not changed. The tenancy runs with the land, not whether there is a change in property management companies, such as in this case.

Further, this was the tenant's second fixed term tenancy agreement and clause 8, was not a term of the original agreement. I find it would have been impossible for the landlord's new agent to have advertised the premises, communicated verbally and also reminded the tenants during the showing of the property that they agreed to mutually

end the tenancy. This simply cannot be true as they were not the landlord's property manager when the tenants took possession in 2019. It is also not logical when the testimony of the landlord's agent was this is their business practice to put new tenants on a probationary period. Clause # 8 combined with the landlord's agent testimony simply shows the landlord's agent is not credible on this issue.

I am satisfied that the landlord or the landlord's property management company is attempting to work outside the Act and are using their position to take advantage of the weaker party, the tenant. The tenant was under no obligation to enter into any new tenancy agreement with the landlord on March 13, 2020, simply because there was a change to the management company.

The landlord nor their management company notified the tenant of their rights, such as informing the tenant that the original agreement would continue on a month-to-month basis as shown in the original tenancy agreement. Rather, I find the landlord, or their agent took advantage of the tenant by making the tenant sign a new fixed term agreement, which would automatically end their tenancy by mutual agreement.

Further, there is no provision under the Act, that the landlord can end a tenancy because of a probationary period has expired and that they have determined the relationship is not working. I find this is not logical or reasonable as there is nothing in clause #8 that states this is due to a probationary period, and even if it was, would be unenforceable as the landlord can only end a tenancy in accordance with Part 4 of the Act.

Furthermore, there is no provision under the Act, that the landlord can end a tenancy simply because the tenant does not want to enter into a new fixed term agreement, which in this case the landlord was willing to have the tenancy continue, only if the tenant agreed to pay a rent increased of \$100.00, with another mutual agreement to end the tenancy. Under the Act, there is no mandatory requirement for the tenant to enter into a new fixed term agreement as it would automatically revert to a month-to-month tenancy and then rent can only be increase by the allowable amount under sections 41, and 42 of the Act.

I find the landlords' actions are an abusive of their authority and is so one sided and is grossly unfair to the tenant. I find clause #8 of the addendum to the tenancy agreement is unconscionable and therefore unenforceable as per RTB Policy Guideline 8.

In addition, I find the landlord is attempting to avoid the Act and if the landlord was granted permission to continue this egregious process the landlord would have the power to simply end the tenancy for any unknown reason and allow them to collect rent increases that are not permissible under the Act. Section 5(2) of the Act states that any attempt to avoid the Act or contract out of the Act has no force or effect, I find that this process must end.

Based on the above, I cancel the mutual agreement to end the tenancy and strike clause #8 from the addendum of the tenancy agreement. As the fixed term agreement has now expired. I find the tenancy automatically reverts to a month-to-month basis. The tenant is not obligated to enter into any new agreement with the landlord.

I ORDER the landlord and their agents to immediately cease their current business practice which is to make tenants sign mutual agreements to end the tenancy at the time they enter into the tenancy agreement, simply for the purpose of being on probation or that they must move simply because the lease expires and the tenant does not want to pay a higher rent.

I CAUTION the landlord and their agents that should this business practise continue, they will be referred to the Compliance and Enforcement Unit for an investigation and may be subject to administrative penalties.

The landlord's application for an order of possession is dismissed. The landlord is not entitled to recover the cost of the filing fee from the tenant.

The tenant's application to cancel the mutual agreement to end tenancy is granted. The landlord must comply with the Act. As the tenant was successful with their application, I grant the tenant the cost of their filing fee from the landlord. I authorize the tenant a one-time rent reduction of \$100.00, pursuant to section 72 and 62(3) of the Act, to be deducted from a future rent payable to the landlord.

I also have reviewed other terms of the tenancy agreement that is before me, specifically Clauses 7, 12, 14, and 22, they appear they could be contrary to the Act, Regulations or Policy Guideline #1.

I would suggest to the landlord to read the Act, Regulation and Policy Guideline #1 to ensure they are not contracting out of the Act, Regulation and Policy Guidelines.

Conclusion

The landlord's application is dismissed. The tenant's application is granted with the effect the Mutual Agreement to End Tenancy is of no effect and the tenancy continues.

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: June 11, 2021

Residential Tenancy Branch