



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenants' dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the Application. All parties confirmed receipt of each others' evidentiary materials.

Issues(s) to be Decided

Are the tenants entitled to an order for the landlord to comply with the *Act*?

Are the tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or

arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy originally began as a fixed term tenancy from October 20, 2016 to October 31, 2018, with the first year's monthly rent set at \$3,950.00, and monthly rent set at \$4,096.00 for the second year. Rent is payable on the first of the month. The landlord had collected a security deposit in the amount of \$1,975.00, which the landlord still holds. On October 25, 2018, both parties entered into a new fixed term tenancy for November 1, 2018 to October 31, 2020, with monthly rent set at \$4,000.00.

The tenants filed this application for a determination of whether both parties are bound by a new fixed-term agreement, or whether the tenancy had automatically continued as a month-to-month tenancy after October 31, 2020.

It is undisputed that both parties started discussing the renewal of the fixed-term tenancy agreement in early September 2020. The tenants requested a 2 year term to ensure that their daughter could complete her final year of secondary school in the same school, and to ensure stability for their son who would be entering his third year of university. The tenant SB testified that the family was dealing with many issues concurrently with the renewal process, including dealing with repairs to the home, financial hardship due to the pandemic, as well as the sudden decline in SB's mother's health, who passed away in October 2020. The tenants testified that they had signed and returned the 2 year written agreement well before October 31, 2020 to the landlord, renewing the term of the tenancy for another two years. The tenant SB testified that they were never provided a copy by the landlord containing the signature and initials of both parties, and that the landlord has never provided copies in the past. The tenant SB testified that they were under the impression that the tenancy continued on a fixed-term basis, and were not given any indication that the fixed term tenancy had automatically continued as a month-to-month until the landlord's agent had informed that there was a prospective buyer for the home, and that the tenancy was now month-to-month. The tenant SB testified that prior to this exchange, the landlord made no reference to any issues with the renewal of the fixed-term tenancy.

The landlord's agent provided a detailed timeline from the landlord's perspective of the renewal process. The agent confirmed in the hearing that there was communication back and forth between the parties since September 2020 about renewing the fixed-term agreement. The tenants were presented with multiple proposals as the discussions progressed. The initial proposal was for a two year term that began on November 1, 2020, and ends on October 31, 2022, with monthly rent set at \$4,000.00. The landlord's agent sent follow-up emails after the tenants did not return the signed agreement,

and on September 30, 2020 SB replied that they were ready to renew for two additional years, but asked for a reduction in the rent for the first year.

On October 8, 2020, the landlord's agent replied stating that the landlord had declined the request, but proposed a one year agreement instead with rent set at \$4,000.00 per month. The agent stated "if you are good with this, I will send you the amended tenancy renewal contract. Please let me know". The agent followed up on October 16 and 20, 2020 as they did not receive a reply. On October 20, 2020, SB replied "yes, its on the way to you. Thanks!". The landlord responded on the same date "Thanks for your confirmation. The owner will honor the same rent for the renewal year. She will renew one year first. I will send you the renewal contract via the esign software". The landlord's agent followed up on October 29, 2020 that they were still waiting for the tenants to sign the agreement. The agent states that they received a copy of the signed agreement on October 31, 2020, but that this was the two year agreement, and not the one year that the landlord had agreed to. The landlord's agent argued that the two year agreement was revoked on October 8, 2020 after the tenants' request for a rent reduction, and was no longer an active proposal. The landlord's agent states that the term automatically converted to a month-to-month on November 1, 2020 as the tenants did not return the one year renewal offer by the end of the fixed-term on October 31, 2020.

Analysis

In consideration of the evidence and testimony before me, it is undisputed that both parties were bound by a fixed-term tenancy until at least October 31, 2020. Both parties entered into a discussion over the renewal of the fixed-term tenancy, and the landlord had made two different proposals: the first proposal was a two year fixed term, and after a rent reduction request was made by the tenants, the landlord rejected the request, and amended the proposal to a 1 year term. The landlord's agent sent the tenant SB an email on October 8, 2020 stating that they were sending the tenants the amended proposal for signing, to which the tenant SB replied "yes, it's on the way to you. Thanks!" on October 20, 2020. Shortly after this, the tenants had sent the landlord a copy by mail, which the landlord's agent confirmed was received on October 31, 2020, but was the wrong proposal. The landlord's agent argued that as the active proposal of one year was not signed prior to October 31, 2020, the tenancy had automatically converted to a month-to-month as per the *Act*.

Section D of Residential Policy Guideline 30 states the following about fixed-term tenancies:

:”A landlord and tenant may agree to renew a fixed term tenancy agreement with or without changes, for another fixed term. If a tenancy does not end at the end of the fixed term, and if the parties do not enter into a new tenancy agreement, the tenancy automatically continues as a month-to-month tenancy on the same terms. Rent can only be increased between fixed-term tenancy agreements with the same tenant if the notice and timing requirements for rent increases are met.”

I have considered the testimony and evidence before me, and although I am highly sympathetic towards the tenants and the fact that the renewal process for this tenancy took place during a very tumultuous time in their lives, in light of the disputed testimony before me, I must base my decision on the facts and evidence before me.

It is undisputed that the tenants did return a signed agreement to the landlord before October 31, 2020. The landlord’s agent acknowledges receipt of the two year agreement from the tenants, which was the original proposal from the landlord. In light of the evidence before me, I find that the tenants had communicated by email their acceptance of the amendment to a one year term, as supported by the October 20, 2020 email, which stated ““yes, its on the way to you. Thanks!” .I find that the landlord’s agent made it clear that the active proposal was for a one year term, as confirmed in the follow up email on October 20, 2020. Despite the tenants’ confirmation, the tenants had returned a signed two year agreement instead. I find that the landlord’s agent provided very detailed and credible evidence as to the communication between the parties. I also find that the landlord’s agent was very diligent in following up with the tenants prior to the end of the fixed-term, and the tenants had ample opportunity to respond or clarify issues before October 31, 2020. Although there were circumstances that affected the tenants’ ability to respond in a timely basis, I find that that ultimately the tenants had failed to return the amended tenancy agreement as agreed upon. Although the landlord’s agent had never formally communicated to the tenants that the original offer was revoked, I find that the tenants had confirmed acceptance of the new proposal as evidenced by the email communication between the parties. I find that the issuance and acceptance of the new proposal voids the original offer, and despite the fact that the tenants had returned the signed two year agreement instead to the landlord, I find that this action does not automatically reinstate the original proposed agreement. I do not find that the two year fixed-term tenancy agreement returned by tenants to be valid.

As stated above, if “the parties do not enter into a new tenancy agreement, the tenancy automatically continues as a month-to-month tenancy on the same terms”. As the tenants failed to return the amended agreement for a one year term, and as I find tenancy agreement for two years to be of no force or effect, I find that fixed-term tenancy automatically continued on a month-to-month term as of November 1, 2020.

Although the tenants referenced other issues such as the termination of this tenancy for landlord's use or sale of the property, these issues are not before me. Accordingly, I decline to make any further findings. The tenancy will continue until ended in accordance with the *Act*.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. Accordingly, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application. The tenants must bear the cost of this filing fee.

Conclusion

I do not find that the two year fixed-term tenancy agreement returned by tenants to be valid. This tenancy is to continue on a month-to-month basis until ended in accordance with the *Act*.

The tenants' application to recover the filing fee is dismissed 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: June 25, 2021

Residential Tenancy Branch