



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, OLC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to dispute a rent increase that is above the amount allowed, to have the landlord comply with the Act and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing. Both parties confirmed under affirmation that they were not making a prohibited recording of this hearing.

The parties confirmed receipt of all evidence submissions. The landlord stated that they received a package of evidence from the tenants late and this evidence should be excluded. I have reviewed the evidence of the tenants that was submitted late. I find with the exception of the doctor's letter, they are documents that the landlord either issued to the tenants, such as receipts for "use and occupancy" and emails between the parties. I find the documents are not prejudicial to the landlord. Therefore, I will allow these documents to be considered.

However, I do not find the doctor's letter relevant to the issues before me and it was dated June 22, 2021, which should have been served at that time. Therefore, I have excluded the doctor's letter from the evidence submitted.

Preliminary Issues – Settlement to End of Tenancy

During the hearing the evidence of the tenants was that they would be vacating the premise at the end of August 2021, as they had purchased their own unit within the

subject property. The parties at the hearing agreed to enter into a settlement agreement to end the tenancy. I have recorded the settlement agreement as follows:

- The tenancy will legally end on August 31, 2021; and
- The landlord is entitled to an order of possession effective August 31, 2021.

This settlement agreement was reached in accordance with section 63 and 64 of the *Residential Tenancy Act*.

Issues to be Decided

Has the landlord issued a rent increase above the allowable amount?
Should the landlord be ordered to comply with the Act?

Background and Evidence

The tenancy began on June 1, 2020 for a one-year fixed term tenancy that was to expire on May 31, 2021. Rent in the amount of \$2,000.00 was payable on the first of each month. A security deposit of \$1,000.00 was paid by the tenants.

At the time the parties entered into the tenancy agreement they signed a mutual agreement to end the tenancy that was effective May 31, 2021. The addendum to the tenancy agreement reads as follows:

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 tenants testified that they challenged the mutual agreement to end the tenancy as it was signed at the beginning of the tenancy which is not normal practice and is an attempt to work outside the Act. The tenants stated that this was presented to them at the time they were signing the fixed term agreement and they had no choice but to sign the document or lose their housing.

The tenants testified that in January 2021, they wanted to be able to stay in the rental unit for another fixed term tenancy and they received an offer to renew the lease for an additional year. The tenants stated that the new agreement the landlord wanted the rent to go from \$2,000.00 per month to \$2,350.00 and another mutual agreement to end the tenancy.

The tenants testified that they had until the end of April 30, 2021 to accept the landlords offer; however, after they raised the issue of the rent increase the landlord rescinded their offer to continue the tenancy and wanted them to vacate based on the mutual agreement.

The landlord's agent testified that the tenants were fully aware that the tenancy must end on May 31, 2021 as this was in the rental advertisement and again they were told this when viewing the premises and when entering into the tenancy agreement.

The landlord's agent testified that the rental unit is normally rented for short term vacation rental; however, due to Covid the owner decided that they would rent the premises under a fixed term agreement with a mutual agreement to end the tenancy in May 2021 because the rental unit would be again used for vacation rental.

The landlord's agent testified that the tenant's approached them wanting to renew the lease for another one-year fixed term agreement. The agent stated when they spoke to the owner they were agreeable to do so, with a new tenancy agreement and the rent in that agreement was the amount of \$2,350.00, this was because the landlord would be losing money if the premises was not being used as a vacation rental.

The landlord's agent testified that this was a new fixed term agreement and not an extension on the original tenancy agreement and therefore not an illegal rent increase.

The landlord's agent testified that the tenants are simply overholding the rental unit because they have purchased their own property and can't move in until the end of August. The landlord stated they should be entitled to an immediate order of possession.

The tenants confirmed they had purchased a unit in the same building; however, they only did so because the landlord were not going to renew their lease and they did not know what the outcome of this hearing would be. The tenants stated they are unable to move into their unit because there is a renter under a fixed term agreement, and they

could not end the tenancy before the expiry of that agreement, which is the end of August 2021.

The landlord's agent argued that it is unreasonable for the tenants to honour their own tenant's tenancy agreement yet violate their own tenancy agreement by not vacating when required to do so.

Analysis

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

In this case, the evidence of landlord's agent was this property was a vacation rental and it was only due to Covid that the landlord decided to rent the premises for a one-year fixed term agreement. The evidence of the landlord's agent was that the rental unit was advertised that the tenants must vacate at the end of the fixed term and clause 8 in the tenancy agreement addendum was added to ensure they must vacate and this was also in the mutual agreement to end the tenancy.

I accept the rental unit was advertised for a one- year fixed term agreement. I have reviewed a copy of the advertisement filed in evidence by the landlord which in part reads as follows:

"This condo comes fully furnished FURNITURE CANNOT BE REMOVED.
\$2,000.00 a month inclusive of Hydro, Cable, and Internet. Lease commencing
June 1st, 2020 ending May 31st, 2021. NO PETS SORRY".

I do not accept the landlord's agent evidence that the tenants were aware at this time that the tenancy must end and that they must vacate at the end of the fixed term as a result of the rental unit being converted back to a vacation rental. The advertisement is simply a standard one-year fixed term tenancy that is a common business practice.

While I accept clause 8 of the tenancy agreement addendum states the tenancy must end. However, I find without any reason as to why it must end is unconscionable. This would give the landlord the power to just end a tenancy without a valid reason or a reason contrary to a provision of the Act. I find making a tenant sign a mutual agreement to enforce this clause is also unconscionable.

Part 4 of the Act defines how a tenancy will end, and section 13.1 of the Residential Tenancy Regulation reads as follows:

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.

I find the landlord cannot use clause 8 of the addendum and then make a tenant sign a mutual agreement to end the tenancy at the start of the tenancy to contract outside the Act. I find this is clearly an attempt for the landlord to end the tenancy and to use the premises for a purpose not permitted under the Regulations. Section 5(2) of the Act states that any attempt to avoid the Act or contract outside of the Act has no force or effect. Therefore, I cancel the mutual agreement to end the tenancy and strike clause 8 from the addendum to the tenancy agreement. I find the tenancy automatically reverts to a month-to-month tenancy.

If the landlord truly intends to use the property for a vacation rental they have the provision of section 49(6)(f) of the Act to end the tenancy for non-residential use.

Further, I find the actions of the landlord do not support that the tenancy must end for the reason stated even if it was allowed under the Regulations, which it is not. The landlord offered the tenant another fixed term agreement at a higher rent and only after the tenants raised the issue of the rent increase was the offer to continue the tenancy withdrawn.

Residential Tenancy Branch Policy Guideline 30 H., states a rent increase between fixed term tenancy agreements with the same tenant for the same unit is subject to the rent increase provisions of the legislation, including requirements for timing and notice.

To raise the rent above the maximum annual allowable amount, the landlord must have either the tenant's written agreement or an order from an arbitrator.

I do not accept the evidence of the landlord's agent that they are entitled to increase the rent over the allowable amount simply because they are entering into a new fixed term agreement. This is still the same tenant in the same rental unit, and they did not have the written agreement of the tenant to increase the rent. This leads me to believe that the landlord is attempting to contract outside the Act by avoiding the rent increase provision of the Act and when the tenants do not agree to such an increase, such as in this case, they will then use the mutual agreement to end the tenancy, which I find unconscionable.

I find it appropriate to make the following Order against the landlord.

I ORDER the landlord and their agents to immediately cease their current business practice. Clause 8 of their addendum is unenforceable and contrary to the Regulation. They cannot make a tenant sign a mutual agreement to end the tenancy at the start of the tenancy when the reasons for ending the tenancy are not permitted under the Regulations.

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

As the tenants were successful with their application, I find the tenants are entitled to recover the cost of the filing fee. I authorize the tenants to deduct \$100.00 from August 2021 rent, in full satisfaction of this award.

Conclusion

The tenants' application to have the landlord comply with the Act is granted. The tenants are authorized a onetime rent reduction from August 2021 to recover the cost of the filing fee.

The landlord is entitled to an order of possession based on the settlement, and therefore, effective August 31, 2021 at 1:00pm.

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 16, 2021