



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Jacken Investments Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession. The hearing was conducted via teleconference and was attended by the landlord's agent.

The landlord testified and provided documentary confirmation that the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on October 7, 2021, in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed. Based on the testimony and evidence of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for breach of an agreement to vacate, pursuant to Sections 44 and 55 of the *Act*.

Background and Evidence

The landlord has submitted copies of two separate tenancy agreements signed by both parties, as follows:

- Tenancy Agreement "A" was signed by both parties on August 31, 2020 for a one-year fixed term tenancy beginning on October 1, 2020 for a monthly rent of \$1,920.00 due on the 1st of each month with a security deposit of \$800.00 paid. I note the landlord and tenant both initialled Section 2 E of the tenancy agreement which stipulates that at the end of the fixed term the tenant must vacate the

rental unit. The reason given that the tenant must vacate the unit is recorded as "If tenant fail to enter into a new fixed term lease" [reproduced as written].

- Tenancy Agreement "B" was signed by both parties at some time in the fall of 2021 (the dates are blank on the agreement) for another one-year fixed term tenancy beginning on October 1, 2021 for a monthly rent of \$1,950.00 due on the 1st of each month with a security deposit of \$800.00 paid. The landlord is the only party who initialed Section 2 E that states the tenant must vacate the rental unit if the tenant fails to enter into a new fixed term tenancy agreement.

The landlord sought to end the tenancy based on Tenancy Agreement "A" because at the time the tenant had not signed the new fixed term tenancy agreement and even after they did, they did not initial Section 2 E agreeing to the requirement to vacate the rental unit.

The landlord confirmed that the landlord has not sublet the rental unit from another landlord and that the landlord is a corporate landlord and not an individual. In addition, the landlord confirmed that the landlord or their spouse does not intend to move into the rental unit.

Analysis

Section 44 of the *Act* states that, in the case of fixed term tenancies, a tenancy may end if the agreement is one that requires the tenant to vacate the rental unit at the end of the term under the circumstances prescribed under Section 97(2)(a.1) of the *Act*. Section 97(2)(a.1) allows the Lieutenant Governor in Council to make regulations prescribing 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.

Section 13.1 of the Residential Tenancy Regulation states that for the purposes of Section 97(2)(a.1) of the *Act*, 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) the 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.

In the case before me, as Section 2 E of Tenancy Agreement "A" stipulates that the tenant must vacate the rental unit at the end of the fixed term if the tenant fails to entered into a new tenancy agreement and the landlord has confirmed that they are not an individual and/or that any close family member intends to move into the rental unit, I

find that the requirement to vacate the rental unit does not comply with the requirements set forth in Section 13.1 of the Regulation. As such, in this circumstance, I find the landlord is not entitled to an order of possession.

I also find that, in addition to my finding above, the landlord has already entered into a new fixed term tenancy agreement with the tenant, and again this renders the landlord ineligible for an order of possession.

While the landlord submitted that the tenant had not “fully signed” the tenancy agreement because she has not initialed Section 2 E of Tenancy Agreement “B” I find that actually both parties have signed the agreement and that the tenant’s failure to initial Section 2 E does not render the agreement unsigned but rather indicates that the tenant did not agree to that term.

I also note that even if the tenant had agreed to the term outlined in Section 2 E the clause would not be enforceable, based on the same rationale as I have outlined above that the reason for vacating the unit is not compliant with Section 13.1 of the Regulation.

I also note that Section 44 (3) stipulates that 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 and 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.

While both tenancy agreements have clauses requiring the tenant to vacate the rental unit at the end of the fixed term and I have found that these clauses in both tenancy agreements submitted into are not compliant the requirements under the *Act* and Regulation, it has the same effect as not having any allowable clause for the tenant to vacate. As a result, the tenancy should convert to a month-to-month tenancy at the end of the fixed term and there is no **requirement under the Act**, for the parties to enter into a new tenancy agreement, unless they mutually agree to do so.

I also note that even if they do agree to enter into a new tenancy agreement and the only term that is changed is the amount of monthly rent, the landlord must still issue notices to increase the rent that must be compliant with Sections 40, 41, 42, 43 and 43.1 of the *Act*.

Conclusion

Based on the above, I dismiss the landlord's Application for Dispute Resolution, in its entirety and 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: February 11, 2022

Residential Tenancy Branch