



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Core Holdings Corp
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPM

Introduction

This hearing dealt with the landlord's application pursuant to section 55 of the *Residential Tenancy Act* (the *Act*) for an Order of Possession on the basis of a Mutual Agreement to End Tenancy.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the "landlord"). The tenant was assisted by an advocate.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The tenant testified that they received the landlord's materials and had not served any evidence of their own. Based on their testimonies I find the tenant duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began on May 1, 2016. The current monthly rent is \$635.00 payable on the first of each month, increased pursuant to the *Act* and regulations as of January 1, 2022 from \$627.00. The parties signed a Mutual Agreement to End Tenancy in September 2021 providing an end of tenancy date of October 31, 2021. The parties confirm that the tenant has not vacated the rental unit on the effective date of the Agreement.

The parties agree that the tenant has made full payment of the monthly rent for November 2021 to the present date and there is no rental arrear as at the date of the hearing.

The tenant submits that they did not understand the implication of signing a Mutual Agreement to End Tenancy. The tenant's advocate made some submissions that the tenant was undergoing medical treatment at the time of signing which diminished their capacity to enter binding agreements.

Analysis

I find that a binding Mutual Agreement to End Tenancy was entered by the parties in September 2021. I find the tenant's submission that they did not understand the implication of the document they were signing to not be persuasive. If the tenant did not understand the nature of the document they could simply have declined to sign.

The parties used the standard form provided by the Branch which is clearly titled, "Mutual Agreement to End a Tenancy" and includes highlighted information at the top of the form stating:

This form is NOT a Notice to End Tenancy. Neither a Landlord nor a Tenant is under any obligation to sign this form. By signing this form, both parties understand and agree the tenancy will end with no further obligation between landlord(s) or tenant(s). If you are the tenant, this may include foregoing any compensation you may be due if you were served a Notice to End Tenancy. If you have questions about tenant or landlord rights and responsibilities under the

Residential Tenancy Act or the Manufactured Home Part Tenancy Act, contact the Residential Tenancy Branch using the information provided at the bottom of this form before you sign.

I further find little evidence to support that the tenant was without capacity at the time of signing.

Both the *Adult Guardianship Act* and *Representation Agreement Act* state that every adult is presumed to be capable of making decisions about their personal care, health care and legal affairs until the contrary is demonstrated.

I find the submission of the tenant's advocate to not be supported in any documentary medical evidence and is contradicted by the tenant's own testimony that they believed the document they were signing pertained to complaints about their pets. Mistaken understanding of the consequences of a document is different from being without capacity to enter into an agreement. I find the submissions to be insufficient to rebut the presumption of capacity. Accordingly, I find the parties entered an enforceable Mutual Agreement to End Tenancy effective on 1:00pm of October 31, 2021.

Residential Tenancy Policy Guideline 11 discusses the issue of waiver of notice and new or continued tenancy. The Guideline states in relevant parts:

Express waiver happens when a landlord and tenant explicitly agree to waive a right or claim. With express waiver, the intent of the parties is clear and unequivocal. For example, the landlord and tenant agree in writing that the notice is waived and the tenancy will be continued.

Implied waiver happens when a landlord and tenant agree to continue a tenancy, but without a clear and unequivocal expression of intent. Instead, the waiver is implied through the actions or behaviour of the landlord or tenant.

For example, if a landlord gives a notice to end tenancy, a landlord may accept rent from the tenant for the period up to the effective date of the notice to end tenancy without waiving the notice. However, if the landlord continues accepting rent for the period after the effective date but fails to issue rent receipts indicating the rent is for "use and occupancy only," it could be implied that the landlord and tenant intend for the tenancy to continue.

In the present case I find sufficient evidence to conclude that the conduct of the landlord and the parties amounts to an implied waiver of the Mutual Agreement to End Tenancy and reinstatement of the tenancy.

The parties confirmed that the tenant has made full payment of the rent to date. The parties did not submit into documentary evidence any receipts or correspondence indicating that these payments, accepted after the effective date of the Mutual Agreement, were for use and occupancy only and did not reinstate the tenancy.

Furthermore, the parties agree that the landlord imposed a rent increase in accordance with the Act and regulations effective January 1, 2022. While neither party provided a copy of the Notice of Rent Increase, I accept the undisputed evidence of both parties that the rent was increased from \$627.00 to \$635.00, an amount in accordance with the allowable rent increase under the legislation. I find that this conduct is inconsistent with a tenancy that has ended and more in line with an ongoing tenancy.

Therefore, I find on a balance of probabilities that this ambiguity in the landlord's conduct amounts to a waiver of the landlord's right to seek an Order of Possession.

I find that the landlord waived their right to pursue an Order of Possession. I find that the landlords reinstated this tenancy by accepting full rent payments from the tenant for November and December, 2021 after the effective date of the Mutual Agreement, imposing a rent increase in accordance with the Act for January, 2022 and accepting payments of the new monthly rent amount for January, February and March, 2022 without specifying that the payments were accepted for use and occupancy only.

Accordingly, I dismiss the landlord's application.

Conclusion

The landlord's application is dismissed without leave to reapply. This tenancy continues until ended in accordance with the *Act*.

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: March 8, 2022

Residential Tenancy Branch