



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MNDCL-S, FFL

Introduction

This hearing dealt with the Landlords' application under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession under a fixed term tenancy agreement pursuant to section 55(2)(c) of the Act;
- compensation of \$1,200.00 for monetary loss or other money owed to the Landlords pursuant to section 67, and to retain the security and/or pet damage deposit pursuant to section 72(2)(b); and
- authorization to recover the filing fee for this application from the Tenants pursuant to section 72.

The Landlords and Tenants attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees were advised that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

The parties did not raise any issues with respect to service of documents for dispute resolution. The Tenants acknowledged receipt of the Landlords' notice of dispute resolution proceeding packages and evidence. The Landlords acknowledged receipt of the Tenants' evidence. I find the parties were served with such documents in accordance with sections 88 and 89 of the Act.

Issues to be Decided

1. Are the Landlords entitled to an Order of Possession?
2. Are the Landlords entitled to compensation of \$1,200.00 for monetary loss or other money owed and to retain the security deposit?
3. Are the Landlords entitled to recover the filing fee?

Background and Evidence

This tenancy commenced on May 17, 2021. Rent is currently \$1,600.00 per month due on the first day of each month. The Tenants paid a security deposit of \$750.00 which is held by the Landlords in trust.

The parties entered into multiple fixed-term agreements with respect to this tenancy. The most recently signed agreement, dated June 4, 2022, was for a fixed term of three months from June 1, 2022 to August 31, 2022. Previously, the parties had signed a similar agreement dated November 2, 2021, which was for a fixed term from December 1, 2021 to May 31, 2022.

The Landlords testified that following a mutual agreement to end the tenancy, the Landlords' plans were to show the rental unit to new tenants. However, the Tenants had a change in their plans and unilaterally decided that they no longer wanted to leave the rental unit.

The Landlords stated that the Tenants were taking advantage of a system designed to protect tenants and that as a result, the Landlords' time was wasted and they have lost rental income.

The Landlords referred to text message correspondence between the parties submitted into evidence by the Tenants. The Landlords argued that the parties' intention was to have the tenancy end on August 31, 2022. The Landlords argued that the June 4, 2022 tenancy agreement was essentially a mutual agreement to end the tenancy on August 31, 2022. The Landlords testified that there was talk about the Tenants going back home or moving in with their partners. The Landlords denied that they had coerced the Tenants to sign the June 4, 2022 agreement.

The Landlords emphasized that there had been no communication from the Tenants regarding any changes in their plan until early August 2022. The Landlords explained

that the night before the Landlords' intended viewings with prospective tenants, the Tenants unexpectedly texted the Landlords and asked to switch to a month-to-month tenancy.

The Landlords argued that changes to the parties' mutual agreement to end the tenancy must be in writing. The Landlords requested an Order of Possession and lost rental income of \$1,200.00 from September to December 2022.

In response, the Tenants argued that when the parties signed the June 4, 2022 tenancy agreement, their previous agreement had already expired and had turned to a month-to-month tenancy. The Tenants testified that they had already paid rent for June 2022 by that time.

The Tenants testified they did not have any intention to leave the rental unit. The Tenants testified that when the November 2, 2021 agreement expired at the end of May 2022, the Landlords came to the rental unit to ask what the Tenants' intentions were. The Tenants testified that they were disappointed to learn that they couldn't stay. The Tenants explained that they had understood the Landlords were reclaiming the rental unit for their own use. The Tenants stated that they understood the Landlords would have needed to give the Tenants two months' notice and they had felt like they were being kicked out, so the Tenants asked to stay for three months.

The Tenants testified that they refused some viewings because the Landlords did not give at least 24 hours' notice.

The Tenants testified they felt that the Landlords were acting in bad faith. The Tenants argued that the Landlords changed their plans and wanted new tenants for more money. The Tenants testified that the Landlords said if the Tenants wanted to stay, they would need to sign a new tenancy agreement that increased the monthly rent from \$1,600.00 to \$2,000.00. The Tenants stated that their rent had already been increased by \$100.00 a month, which was a 6.6% increase. The Tenants expressed that they would like to continue the tenancy on a month-to-month basis under the same terms.

Analysis

1. Are the Landlords entitled to an Order of Possession?

Section 55(2)(c) of the Act states:

Order of possession for the landlord

55

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

[...]

(c) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97(2)(a.1), requires the tenant to vacate the rental unit at the end of the term; [...]

Residential Tenancy Policy Guideline 30. Fixed Term Tenancies (“Policy Guideline 30”) states:

B. VACATE CLAUSES

A vacate clause is a clause that a landlord can include in a fixed term tenancy agreement requiring a tenant to vacate the rental unit at the end of the fixed term. It can only be included in a fixed term tenancy in the following circumstances:

- the landlord is an individual who, or whose close family member, will occupy the rental unit at the end of the term, or
- the tenancy agreement is a sublease agreement.

For example, an owner can rent out their vacation property under a fixed term tenancy with a vacate clause if they or their close family member intend in good faith to occupy the property at the end of the fixed term. The landlord or close family member must occupy the rental unit for at least 6 months. Occupancy can be part time, e.g., weekends only. Failing to occupy the rental unit for at least 6 months may result in the landlord being ordered to pay compensation to the tenant equal to 12 months’ rent. See Policy Guideline 50: Compensation for Ending a Tenancy for more information

The reason for including a vacate clause must be indicated on the tenancy agreement and both parties must have their initials next to this term for it to be enforceable. The tenant must move out on the date the tenancy ends. The landlord does not need to give a notice to end tenancy or pay one months’ rent as compensation as required when ending a tenancy under section 49.

If the tenancy agreement does not require the tenant to vacate the rental unit at the end of the term, and if the parties do not enter into a new tenancy agreement, the tenancy continues as a month-to-month tenancy.

(emphasis added)

In this case, clause 2 of the parties' June 4, 2022 agreement states: "The Term of this agreement shall begin on 1, June, 2022 for a period of 3 months, until, and no later than, 31 August 2022." I find that this agreement does not contain a vacate clause explicitly stating that the Tenants must leave the rental unit upon the expiry of the fixed term, that is, by August 31, 2022.

I note that even if there had been a vacate clause in this agreement, as stated in Policy Guideline 30, the "reason for including a vacate clause must be indicated on the tenancy agreement and both parties must have their initials next to this term for it to be enforceable".

Based on the foregoing, I conclude that there is no enforceable vacate clause in the June 4, 2022 agreement. I further find that the reason the Landlords wished to have a vacate clause enforced, that is, to re-rent the rental unit to new tenants, is not a situation permitted under the Act or regulations for including a vacate clause as stated in Policy Guideline 30 (see also section 104.3(1)(a) of the Act and section 13.1(2) of the regulations).

In addition, I note the Landlords had argued during the hearing that the June 4, 2022 agreement is a mutual agreement to end tenancy which entitles the Landlords to an Order of Possession. I note the Landlords have not applied for an Order of Possession on the basis of a mutual agreement to end tenancy, which is under a different section of the Act (section 55(2)(d)). In any event, I do not accept this argument. As mentioned, I do not find the June 4, 2022 agreement to contain any express language that the Tenants agreed to move out of the rental unit on August 31, 2022, such that the parties can be said to have "agreed in writing that the tenancy is ended" (section 55(2)(d)). Moreover, I find the June 4, 2022 agreement is titled "Residential Tenancy Agreement" and contains essentially the same terms as the previous November 2, 2021 tenancy agreement signed by the parties, which had a fixed term of six months instead. For these reasons, I conclude that the June 4, 2022 agreement is a tenancy agreement and not a mutual agreement to end the tenancy.

I find that when the fixed term expired on August 31, 2022, the tenancy automatically continued as a month-to-month tenancy by operation of section 44(3) of the Act, which states:

How a tenancy ends

44 [...]

(3) 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 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 on the same terms.

I note I do not find the Tenants to be “taking advantage of the system”. In my view, if the legislature considered it acceptable for landlords to evict tenants upon the expiry of a fixed-term tenancy in order to re-rent the premises for more rent, there would have been no need for the Act and the regulations to provide such narrow circumstances under which a vacate clause is permitted in a fixed-term tenancy agreement.

I note that clause 19 of the June 4, 2022 agreement purports to give the Landlords the right to “terminate” the agreement before the expiry of the fixed term “by giving notice to the Tenants on or before the 20th day of the month about their intention to terminate the rental on the end of the following month.” I note that this clause is also not consistent with the requirements for ending a tenancy by a landlord under the Act and the regulations. As a reminder to the parties, section 5 of the Act states:

This Act cannot be avoided

5(1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

I further caution the Landlords that they must not increase the rent except in accordance with the Act and the regulations. For reference, the legally allowed amount of annual rent increase in 2022 was 1.5%. As stated in Policy Guideline 30, rent increases “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”

In sum, I conclude that there is no enforceable vacate clause in the parties’ tenancy agreement dated June 4, 2022, which would entitle the Landlords to an Order of

Possession for the rental unit under section 55(2)(c) of the Act. The Landlords' claim under this part is dismissed without leave to re-apply.

2. Are the Landlords entitled to compensation of \$1,200.00 for monetary loss or other money owed and to retain the security deposit?

The Landlords indicated as follows under this portion of their application:

Rentals have considerably gone up in our area and the current monthly rent for a 2-bedroom suite like ours is over \$2000. I was informed that this dispute process will take 3-4 months and as a result of the tenants' refusal to vacate the suite as agreed I will lose \$1200 or more in rent.

Section 67 of the Act states:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

As mentioned above, I do not find that the Landlords are entitled to an Order of Possession under section 55(2)(c) of the Act. I also find that the June 4, 2022 agreement is not a mutual agreement to end tenancy and does not require the Tenants to vacate the rental unit by August 31, 2022.

Based on the evidence presented, I am not satisfied that the Tenants have failed to comply with the Act, the regulations, or a tenancy agreement. Accordingly, I conclude that the Landlords are not entitled to compensation under section 67 of the Act. The Landlords' claim under this part is dismissed without leave to re-apply.

3. Are the Landlords entitled to recover the filing fee?

The Landlords have not been successful in this application. I decline to award the Landlords recovery of the filing fee under section 72(1) of the Act.

Conclusion

The Landlords' application is dismissed in its entirety without leave to re-apply. This tenancy shall continue until ended in accordance with the Act and the regulations.

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: January 09, 2023

Residential Tenancy Branch