



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPB, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the *Residential Tenancy Act* (the “Act”) for an order of possession 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.

The tenant testified that they did not receive the landlord’s evidence. The landlord testified it was posted to the tenant’s door by tape and photographed. Filed in evidence is a photograph supporting this. I find the tenant was duly served in accordance with the Act. Further, I find the evidence not prejudicial to the tenant because it is a copy of the tenancy agreement signed by both parties, and maps from the location of the rental unit to the school and workplace of the landlord’s son. Therefore, I have allowed the evidence to be considered.

The tenant stated they did not serve their evidence on the landlord. As the tenant did not serve the landlord, I find I must exclude the tenant’s evidence. However, I note that is simply a statement of the tenant, which they can provided that information in their testimony.

Issue to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

The parties entered into a tenancy agreement on February 1, 2022, for a fixed term length of time ending the tenancy on December 1, 2022. The tenancy agreement

further states that at the end of this time, the tenancy is ended, and the tenant must vacate the rental unit because a close family member will be moving into the rental unit. Both the landlord and tenant initial that they agreed to this clause. Rent in the amount of \$685.00 was payable on the first day of each month. The tenant paid a security deposit of \$325.00.

Counsel for the landlord submits that the landlord' son wanted to use the rental unit because it is closer to their school and work. Counsel submits the tenant signed the tenancy agreement that they would vacate at the end of the fixed term.

The landlord testified that when they entered into the tenancy agreement they informed the tenant the property was going to be used for their son. The landlord stated that the tenant initialed this clause. The landlord stated that this was not a clause any of the other renters located on the premises had in their tenancy agreement.

The landlord's witness MR testified that they are the son of the landlord, and they are enrolled in post secondary school which the location of the rental unit is closer to the school. MR stated that they are up at 4am to have to go to work which is also closer to the rental unit. MR stated they just want to be closer to work and school as they walk, use buses and the sky train to get to work and school.

The tenant testified that on December 1, 2022, the landlord wanted to increase their rent and they have a witness.

The tenant testified that on January 31, 2022, they had discussion with the landlord because the landlord need the tenancy agreement to be signed for their insurance company. The tenant stated at this time the landlord discussed a higher rent which they would not agree to amount over the allowable amount. The tenant stated that the landlord left and came back the next day with a tenancy agreement.

The tenant testified that they did sign the agreement on February 1, 2022; however, they believed it was in the terms talked about the previous day. The tenant stated they did not read the document. The tenant stated that they noticed after they signed the tenancy agreement that it was not on the same terms as the landlord had added the vacate clause. The tenant stated that they raised this issue with the landlord a couple of days later; however, the landlord said they were busy and refused to talk to them about that. The tenant stated that the landlord did not tell them about the vacate clause.

Counsel for the landlord submits that the landlord is willing to give the tenant until May 31, 2022, to vacate and a rent reduction of 50% for May 2023, to assist the tenant.

Analysis

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

The landlord filed their application for an order of possession on the basis of a breach of a tenancy agreement. The tenant did not receive a notice to end tenancy pursuant to section 49 of the Act, and I do not need to consider the issue of good faith, although it is clear by the evidence that the landlord's son intends to occupy the premises.

Under section 13 (1) of the Act, a landlord must prepare in writing every tenancy agreement. The tenancy agreement must comply with any requirements prescribed in the regulations and any agreed upon terms as indicated in section 31(2) of the Act. A tenancy agreement can only be changed or amended with the agreement of both parties.

In this case, I do not accept the tenant's evidence that they were unaware of the conditions that they were signing. The tenant placed their initial on the specific clause which is bolded **that the tenant must move out on or before the last day of the tenancy**. I find it was the tenant's responsibility to read the tenancy agreement before signing.

Further, if the tenant did not understand the terms to which they were signing and raise this issue with the landlord a couple of days later and the landlord refuse to make any changes. I find it would have been reasonable for the tenant to make an application for dispute resolution in February 2022 to have the tenancy agreement viewed. The tenant made no such application, and the tenancy has legally ended based on the condition of the tenancy agreement.

I find the vacate clause in the tenancy agreement is binding on the parties and the tenant was required to vacate the premises on December 1, 2022. I find the tenancy legally ended on December 1, 2022, and the tenant is overholding the premises.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective at **1:00 PM on May 31, 2023**, as the landlord agreed to give the tenant

more time to vacate. The tenant is also entitled to reduce May 2023 rent by 50% as this was stated at the hearing.

As the landlord was successful with their application, I find the landlord is entitled to recover the cost of the filing fee from the tenant. I authorize the landlord to keep \$100.00 from the tenant's security deposit in full satisfaction of this award.

Conclusion

The tenancy legally ended on December 1, 2022. The landlord is granted an order of possession effective 1:00 PM on May 31, 2023. The tenant is authorized to reduce May 2023, rent by 50%. The landlord is authorized to keep \$100.00 from the tenant's security deposit in full satisfaction to recover the cost of the filing fee.

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: April 17, 2023

Residential Tenancy Branch