



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MCLAREN HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB

Introduction

This hearing dealt with a landlord's application for an Order of Possession based upon the terms of a fixed term tenancy. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

I noted that I had not received any documentary evidence from the landlord. The landlord submitted that it had been served upon the Branch and the tenant. The tenant confirmed receipt of the landlord's evidence. I requested the landlord re-submit the relevant documentation via facsimile during the hearing, which was done. As such, I referred to the landlord's evidence in making this decision.

The tenant confirmed that she did not submit any evidence in support of her position.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The tenancy commenced in October 1, 2013 and the tenant was required to pay subsidized rent of \$375.00. Rent was received by way of direct deposit from the Ministry.

The landlord submitted that the tenancy was originally for a fixed term set to expire February 28, 2014, at which time the tenancy would end and the tenant would have to vacate the rental unit, unless the tenancy were renewed. The landlord submitted that the parties agreed in writing to extend the fixed term, with all other terms remaining the

same, until July 31, 2014. In the tenancy agreement, below the expiry date of July 31, 2014 the tenancy agreement provides that:

At this time the agreement is terminated and it is understood the tenant(s) has no legal right to occupy the suite beyond this date.

[Landlord] will consider a renewal of this agreement and notify the resident in writing prior to the expiry date above as to whether they will be offered a new agreement when the current one expires.

[reproduced as written]

On June 27, 2014 the landlord issued a letter to the tenant to inform her that the landlord would not be renewing the tenancy and that the tenant would be required to vacate the rental unit by 1:00 p.m. on July 31, 2014.

The landlord seeks an Order of Possession as the tenant still has possession of the rental unit despite the expiry of the fixed term. The landlord acknowledged that monies were received directly from the Ministry for the months of August and September 2014 but agreed to refund rent for any days after which possession is returned to the landlord.

The tenant testified that she signed the original tenancy agreement and the extension of the fixed term tenancy in March 2014 and that she was “over-holding” until such time she signed the documents. The tenant submitted that although her tenancy ended July 31, 2014 she should be permitted to continue occupancy on the same basis: that she is overholding.

The tenant further explained that in late June 2014 she moved to a shelter and to her boyfriend’s home but she return to the rental unit a few days ago after learning the rental unit was still in her possession. The tenant acknowledged that when she went to stay at a shelter and her boyfriend’s home left she did not take her possessions with her.

The tenant requested more time to vacate the rental unit.

During the hearing, both parties were agreeable to returning possession of the rental unit on September 29, 2014.

Analysis

Under the Act, a tenant is required to vacate their rental unit if the tenancy agreement is for a fixed term and the tenancy agreement clearly stipulates that on the expiry date the tenancy ends and the tenant must vacate. The Act provides that a landlord may request an Order of Possession in such circumstances.

Upon review of the tenancy agreement presented to me, I am satisfied the parties had a fixed term tenancy set to expire July 31, 2014 and that, pursuant to the terms of tenancy, the tenant was required to vacate the rental unit by that date.

While the tenant may have been over-holding in March 2014 before the fixed term extension was agreed upon, I find that the tenant's current over-holding status does not entitle the tenant to continue to over-hold or require the landlord to renew her tenancy. Rather, the definition of overholding is that the tenancy has ended and the tenant no longer has a right to occupancy.

In light of the above, I find the landlord entitled to regain possession of the rental unit and I grant the landlord's request for an Order of Possession.

Based upon the mutual agreement between the parties, I provide the landlord with an Order of Possession effective at noon on September 29, 2014.

Conclusion

The tenant must return vacant possession of the rental unit to the landlord by noon on September 29, 2014 and the landlord is provided an Order of Possession to serve and enforce if necessary.

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: September 23, 2014

Residential Tenancy Branch

