



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NORTH PARK MANOR SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB, MNSD, MNDC, FF

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord sought an Order of Possession based on a breach of the tenancy agreement, a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), the Regulations or the tenancy agreement, authorization to retain the security deposit and to recover the filing fee.

The Landlord applied for Dispute Resolution on August 25, 2015. The original hearing occurred on October 21, 2015 and the Landlord failed to attend; consequently, their application was dismissed without leave to reapply. On October 27, 2015 the Landlord applied for Review Consideration pursuant to section 79(2) of the Act, on the basis that they were unable to attend the hearing for circumstances which were beyond their control. By Decision dated October 29, 2015 the Landlord's request was granted. This hearing review hearing convened on December 2, 2015 at 3:00 p.m.

Both parties appeared at the hearing. The Tenant appeared on his own behalf. In attendance for the Landlord was J.S., the Operations Supervisor; T.G., the Operations Manager; C.S. the Administrative Assistant. J.S. spoke on behalf of the Landlord and for the purposes of this my Decision will be referred to as the "Landlord".

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the rules

of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

In the Landlord's Application they sought an Order of Possession as well as monetary relief.

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Landlord's request for an Order of Possession and the continuation of this tenancy is not sufficiently related to the Landlord's monetary claim. Accordingly, I exercise my discretion to dismiss the Landlord's monetary claim (save and except their claim to recover the filing fee) and I grant the Landlord leave to reapply for this relief.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Should the Landlord recovery the filing fee?

Background and Evidence

The Landlord testified that the tenancy began on June 1, 2015. Introduced in evidence was a copy of the Residential Tenancy Agreement made May 26th, 2015 (the "Agreement"). The Landlord submitted that the tenancy was for a three month fixed term based on clause 4 of the Agreement which reads as follows:

3. TERM

The tenancy created by this Tenancy Agreement begins on the June 1, 2015 and continues for 3 months.

[Reproduced as Written]

When I asked the Landlord when the tenancy was to end, he responded “after three months”. When I asked if it was to continue on a month to month basis or end, he responded that it “depended on whether the Tenant was a suitable tenant”.

The Landlord testified that the Tenant was not suitable and as such the Landlord sought to end the tenancy at the end of the three month term. The Landlord introduced in evidence letters from other renters, as well as incident reports regarding incidents on June 23, 2015, September 22, 2015 and October 8, 2015 all of which were provided by the Landlord in support of the Landlord’s view that the Tenant was “not suitable”. Much of this evidence related to an incident wherein the Tenant removed a construction barrier.

The Tenant testified that he was aware of the three month term, but that he was told the tenancy would continue provided that he was a “suitable” tenant. The Tenant further stated that he does not know what a “suitable tenant” means but that he believes he has been one. He further testified that just prior to the hearing the Landlord informed him what “suitable” meant, when the Landlord provided him a letter enumerating acceptable behaviour including:

1. Do not do anything to common areas; and
2. No negative interactions with others.

The Tenant confirmed receipt of the August 12, 2015 letter in which the Landlord informed him the tenancy was to end at the end of August 2015. He further stated that he has about 150 letters from the Landlord. When asked why he did not vacate at the end of the three months the Tenant responded that he was told the three month term was subject to him being a “suitable tenant” and he believes he is a suitable tenant thereby satisfying this requirement.

The Tenant said he enjoys a peaceful tenancy; he pays his rent on time; gets along with other; and, never has any issues with others, except about “6 angry men”. He also admitted that he moved the construction barricade, but that he apologized and explained himself.

Analysis

The Landlord relies on paragraph 4 of the Residential Tenancy Agreement. This paragraph provides that the tenancy begins on June 1, 2015 and is for a three month term

Section 1 of the *Residential Tenancy Act* provides as follows:

"fixed term tenancy" means a tenancy under a tenancy agreement that specifies the date on which the tenancy ends;

Section 13 deals with requirements for tenancy agreements and provides at paragraph 13(2)(f) as follows:

13 ...(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

...(f) the agreed terms in respect of the following:

...(iii) if the tenancy is a fixed term tenancy,

(A) the date the tenancy ends, and

(B) whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date;

The requirements for fixed term tenancies are also set out in *Residential Tenancy Policy Guideline 30—Term Tenancies* which provides as follows:

The agreement must state the date the tenancy ends, and whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date. If the parties do not agree that the tenant must vacate the rental unit at the end of the fixed term, and if the parties do not enter into a new tenancy agreement, the tenancy continues as a month to month tenancy.

Accordingly, I find that paragraph 4 of the tenancy agreement fails to meet the definition of a fixed term tenancy pursuant to sections 1 and 13 of the *Act*, or the requirements of a fixed term tenancy as set out in *Policy Guideline 30*.

Both parties testified that at the time the parties entered into the tenancy agreement, the parties agreed that the tenancy would continue beyond the three month term if the Tenant was a "suitable tenant". No further direction or clarification was provided in the tenancy agreement as to what behaviour was "suitable". I find that this implied term, of "suitability" as a condition for continued tenancy, is too vague to be enforceable and as such is unconscionable.

Section 5 of the *Act* provides that the *Act* cannot be avoided and reads as follows:

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.

Section 6 of the Act provides that unconscionable terms are not enforceable and reads as follows:

Enforcing rights and obligations of landlords and tenants

- 6** (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.
- (2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58
- (1) *[determining disputes]*.
- (3) A term of a tenancy agreement is not enforceable if
- (a) the term is inconsistent with this Act or the regulations,
 - (b) the term is unconscionable, or
 - (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

An unconscionable bargain is one where a stronger party takes an unfair advantage of a weaker party and enters into a contract that is unfair to the weaker party. The determination of whether the agreement is in fact fair, just and reasonable depends partly on what was known, or ought to have been known at the time the agreement was entered.

In the present case I find that the Tenant could not have known, or ought to have known, the Landlord's specific expectations of "suitability", as a condition of continued tenancy as such expectations were not clearly set out in the agreement. I further find that there was an inequality of bargaining power between the parties such that the Landlord was the stronger party. Pursuant to the implied term of "suitability", the Landlord was at liberty to unilaterally make the decision as to whether the tenancy continued after the three months; the Tenant was afforded no input into this decision, nor no right to review the decision.

The Landlord introduced considerable evidence with respect to allegations of the Tenant's behaviour. Should a Landlord wish to end a tenancy for cause, the Landlord may issue 1 Month Notice to End Tenancy for Cause pursuant to section 47. A Tenant

who receives such a Notice is entitled to dispute the Notice, at which time the Landlord's reasons and evidence must pass the scrutiny of an Arbitrator.

The Landlord's application is dismissed. The tenancy shall continue until ended in accordance with the *Residential Tenancy Act*. Having been unsuccessful, the Landlord is not entitled to recover the filing fee.

Conclusion

The Landlord's Application for an Order of Possession and recovery of the filing fee is dismissed. The tenancy shall continue until ended in accordance with the *Residential Tenancy Act*. The Landlord's application for a Monetary Order is dismissed with 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: December 07, 2015

Residential Tenancy Branch

