



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COMMUNITY BUILDERS GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OP FF

Introduction:

Both parties attended and the landlord provided evidence that the Application for Dispute Resolution was served by registered mail. I find that the tenant was legally served with the documents according to section 89 of the Act. The landlord requests pursuant to the *Residential Tenancy Act* an Order for Possession based on the expiry of a fixed term lease; and an order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Is the landlord entitled to an Order of Possession and recover of the filing fee?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced in May 2015 on a fixed term lease expiring December 1, 2015. Then a series of other fixed term leases were signed with the last expiring April 1, 2016. A security deposit of \$225 was paid and rent is currently \$575 a month. The landlord requests an Order of Possession as the tenant has not vacated at the end of the fixed term.

The tenants representatives contended that the fixed term had ended but the landlord had done nothing about it so the lease was automatically renewed as a month to month. They contended the landlord had to serve a Notice to End Tenancy and had not. They based their argument on section 14 of the lease agreement. They also said the landlord continued to receive the rent.

The landlord said they had advised the tenant verbally and by letter that her fixed term had ended. They also had her initials on the lease that said the tenant must vacate at the end of the fixed term. They said they had told her workers repeatedly that she needed to find other housing for her and they had waited until May to bring this Application. They agreed they had collected rent but said they had limited it to 'use and occupancy only' according to notices they sent.

The tenants' workers admitted they had seen a letter regarding the end of the tenancy but said it was not dated and the tenant's name was not on it. They agreed they had been told verbally that the tenancy was ending but said the housing market was difficult. The landlord wanted an Order of Possession as soon as possible. The workers asked to extend the time so she could find housing.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Section 44 of the Act sets out various ways a tenancy ends. Section 44(b) states that one way is if it is a fixed term tenancy that provides the tenant will vacate the unit on the date specified as the end of the tenancy. I find the tenant signed a fixed term tenancy agreement that specified she would vacate on April 1, 2016 and she initialled the box that said she must move out of the unit at the end of the fixed term. I find she did not vacate in compliance with her agreement. The landlord is entitled to an Order of Possession effective June 19, 2016. The landlord offered to refund any of the excess in rent collected for June after the tenant vacates.

Although the tenants' representatives tried valiantly to find problems with the landlord's procedure, I find they misquoted section 14(3) of the lease by omitting the words "and the agreement does not require the tenant to vacate at the end of the tenancy". I find the tenant's agreement in evidence clearly does require her to vacate at the end of the tenancy so, as I pointed out, the landlord is not required to give the tenant a formal Notice to End Tenancy. I also found the landlord's evidence more credible that the tenant and the representatives were advised verbally and by letter that her tenancy had ended and she needed to get other housing. The landlord's credibility is supported by the representatives' admission later that they had seen the letter and had been working on finding her housing.

I find the landlord is entitled to collect rent from an over holding tenant pursuant to section 57(3) of the Act and I find the landlord's evidence credible that they give letters to that effect and note that it is for 'use and occupancy only' and not to renew the tenancy.

Conclusion:

Pursuant to section 55(3), I exercise my discretion to find the landlord is entitled to an Order of Possession effective June 19, 2016 and to recover filing fees paid for this application.

I HEREBY ORDER THAT the landlord may deduct \$100 from the tenant's security deposit to recover the filing fee. This will leave a balance of \$125 in trust for the tenant.

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: June 08, 2016

Residential Tenancy Branch