



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DREAMZ 100 HOLDINGS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPM, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on April 4, 2022. The Landlord applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- an order of possession based on a mutual agreement to end the tenancy; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by FE, an agent. The Tenant attended the hearing on his own behalf. Both FE and the Tenant provided affirmed testimony.

On behalf of the Landlord, FE testified that the Tenant was served with the Notice of Dispute Resolution Proceeding package by registered mail on April 13, 2022. FE also testified the Tenant was served with a subsequent evidence package by registered mail on June 20, 2022. The Tenant raised issues with respect to receipt of these documents but confirmed he was prepared to proceed with the hearing.

The Tenants testified the documents on which he intended to rely were served on the Landlord in person on July 23, 2022. FE acknowledged receipt of copies of several examples of the Tenant's signature and did not raise any issues with respect to service of these documents.

No further issues were raised with respect to service and receipt of the above documents. The Tenant and FE were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

Those in attendance were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issues to be Decided

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The Tenant and FE agreed that the tenancy agreement describes a fixed-term tenancy that began on July 1, 2020 and ended on April 30, 2021. The parties agreed the tenancy continued after the end of the fixed term but disagree about the nature of the continuance. The Tenant still lives in the rental unit. The Tenant and FE agreed that rent of \$1,600.00 per month is due on the first day of each month. The Tenants paid a security deposit of \$800.00, which the Landlord holds. A copy of the signed tenancy agreement was submitted into evidence.

On behalf of the Landlord, FE testified that the parties agreed to continue the tenancy after the end of the fixed term. However, FE testified that the parties signed a Mutual Agreement to End a Tenancy, dated May 28, 2021 (the Mutual Agreement), a copy of which was submitted into evidence. The Mutual Agreement purports to end the tenancy by agreement on March 31, 2022, at 12:00 pm. The Landlord testified the Mutual Agreement was signed by CC, the owner of the rental unit, and the Tenant. CC did not attend the hearing.

Further, FE testified that the Mutual Agreement was entered into because the Landlord intends to make improvements to the rental property. However, FE confirmed the Landlord has not yet obtained permits to do the intended work.

The Tenant denied that he signed the Mutual Agreement. In support, the Tenant submitted several examples of his signature into evidence. The Tenant testified that he wishes to continue the tenancy on a month-to-month basis, in accordance with the Act.

Analysis

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

Section 44(1)(c) of the Act confirms that a tenancy may end if the landlord and tenant agree in writing to end the tenancy.

In this case, I am not satisfied the parties agreed in writing to end the tenancy in accordance with section 44(1)(c) of the Act. The Tenant's signature that appears on the Mutual Agreement differs significantly from the other documents submitted by the Tenant. I also note that CC did not attend the hearing to testify that he witnessed the Tenant sign the Mutual Agreement. Therefore, I find that the Mutual Agreement is of no force or effect and that the tenancy will continue on a month-to-month basis in accordance with section 44(3) of the Act.

The Landlord's application is dismissed without leave to reapply.

Conclusion

The Landlord's application is dismissed without 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: July 25, 2022

Residential Tenancy Branch