



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPB, MNRL, FFL

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order of possession pursuant to s. 55 following the expiry of a fixed term tenancy;
- a monetary order pursuant to s. 67 for unpaid rent; and
- return of the filing fee pursuant to s. 72.

S.B. appeared as the Landlord and was joined by his spouse, H.B.. M.D. appeared as the Tenant.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord’s spouse advises that the Tenant was served with the Notice of Dispute Resolution, which the Tenant acknowledges receipt of without objection. Based on its acknowledged receipt, I find that pursuant to s. 71(2) of the *Act* that the Tenant was sufficiently served with the Notice of Dispute Resolution.

The Tenant advises that her response evidence was provided to the Landlord, which was acknowledged received on April 30, 2023. Based on its acknowledged receipt, I find that pursuant to s. 71(2) of the *Act* that the Landlord was sufficiently served with the Tenant’s response evidence.

Preliminary Issue – Landlord’s Evidence

I am told by the Landlord’s spouse that the Landlord’s evidence was served on the Tenant on May 2, 2023. Though the Tenant acknowledges receiving the Landlord’s evidence, she raises issue on late service.

Rule 3.14 of the Rules of Procedure requires applicants to serve the evidence upon which they intend to rely on all the named respondents, who must receive it at least 14 days prior to the hearing.

When advised of an applicant’s deadline to serve evidence, the Landlord’s spouse acknowledged not knowing the rules. I note that it is no excuse to plead ignorance of the service timeframes. The Tenant, as the respondent, has the right to review and respond to the applicant Landlord’s evidence. The Rules of Procedure, specifically Rule 3.15, sets a seven-day deadline for the respondent Tenant to serve response evidence. In other words, the Tenant could not have reviewed the Landlord’s evidence and also responded in compliance with Rule 3.15.

Accordingly, I find that the Landlord has failed to properly serve his evidence. As such, I do not permit its inclusion and it shall not be considered by me.

Preliminary Issue – Landlord’s Claim for Unpaid Rent

During submissions, the Landlord’s spouse advises that the claim for unpaid rent was made to ensure that rent payments after filing could be claimed if the Tenant refused to pay rent. However, I am told by the Landlord’s spouse that rent was paid by the Tenant in full.

By the Landlord’s own admission, there are no arrears in rent. As such, I dismiss this portion of the claim without leave to reapply.

Issues to be Decided

- 1) Is the Landlord entitled to an order of possession pursuant to a fixed term lease?
- 2) Is the Landlord entitled to his filing fee?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

The parties confirm the following details with respect to the tenancy:

- The Tenant moved into the rental unit in September 2021.
- Rent of \$1,250.00 is due on the first of each month.
- A security deposit of \$625.00 was paid to the Landlord.

I am provided with two tenancy agreements. The first of which is unsigned and lists H.B. as the landlord and shows the fixed term tenancy ends on September 15, 2022. The second is signed and shows S.B. as the Landlord with a fixed term tenancy ending on December 31, 2022.

Section 44(1)(b) of the *Act* permits a tenancy to end by way of a fixed term provided it is under those circumstances established the Regulation. Section 13.1 of the Regulation specifies that a tenant must move out of the rental unit at the end of the fixed term where the landlord or a close family member intends to occupy the rental unit.

I am told by the Landlord's spouse that the fixed term of December 31, 2022 was chosen by the Tenant herself and that the Tenant has continued to reside within the rental unit. The Landlord's spouse emphasized that they did not want a month-to-month tenancy and that they would prefer the certainty of a fixed term. The Tenant says the second tenancy agreement signed in September 2022 was foisted upon her and that the tenancy reverted to a month-to-month tenancy after September 15, 2022.

It is clear based on review of the tenancy agreements and the submissions from the Landlord that regardless of whether the second tenancy agreement is enforceable, neither fixed term would be enforceable. No reason is stated in the September 2021 tenancy agreement why the tenant was to leave and the tenancy agreement from September 2022 simply states the Tenant must leave on December 31, 2022 without further explanation. Further, the Landlord provided no submissions to support that the fixed term tenancy was ever permitted under the *Act*, such that either he or a close family member would occupy the rental unit. The Landlords preference for a fixed term

over a month-to-month tenancy does not make the fixed term enforceable. The tenancy has reverted to a monthly periodic tenancy.

As such, I find that the Landlord has imposed fixed terms in the tenancy agreements in contravention of the *Act*. The application is dismissed.

Conclusion

I dismiss the Landlord's claim under s. 55 of the *Act* for an order of possession pursuant to a fixed term tenancy without leave to reapply.

I find the Landlord was unsuccessful and is not entitled to his filing fee. I dismiss his claim under s. 72 of the *Act* 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: May 09, 2023

Residential Tenancy Branch