



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes

LRE, OPT

Introduction

This hearing dealt with an application by the tenant requesting an Order of Possession to the rental unit after allegedly being illegally locked out of the rental unit by the co-tenant and/or landlord. The tenant also seeks the return of her personal property from the landlord.

The landlord did not appear for the hearing. I accept the evidence of the tenant that the landlord was served with notice of this application and hearing by registered mail on March 27, 2009. Pursuant to section 90(a) of the *Act* I deem the landlord as having been served the documents on the fifth day after they were mailed or on April 1, 2009. I proceeded with the hearing in the landlord's absence.

Preliminary Issue:

I have amended the tenant's application to name only one respondent based on the evidence provided by the tenant that identifies that only one of the named respondents is the landlord and the other respondent is a co-tenant. I amend the application based on my findings from the evidence before me.

Issues to be Determined

Has the landlord illegally locked the tenant out of the rental unit? Is the tenant entitled to possession of the rental unit? Should the landlord be ordered to return the tenant's personal possessions?

Background and Evidence

The tenant submits that she lived in the above named rental unit with a co-tenant beginning January 27, 2009 for the monthly rent of \$375.00 and a security deposit of \$187.50. The tenant submits that her co-tenant, who she shared both the kitchen and bathroom with, is the son of the landlord who lives in the adjacent side of the duplex.

The tenant stated that on March 25, 2009 she returned home to find that the locks to the rental unit had been changed and her personal possessions were left outside. The tenant stated that she collected some of her possessions; however, the remaining items are currently in a greenhouse outside at the rental property. The tenant stated that her co-tenant has been charged for uttering threats against her and there is a peace bond for no contact. As a result the tenant is not seeking possession of the rental unit.

The tenant provided documentary evidence of confirming payment of the first month's rent and security deposit and a letter dated March 25, 2009 from the landlord and her co-tenant. In this letter the landlord confirms that the tenant's possessions have been removed and are being stored in the greenhouse on the property. In the letter the landlord is relying on section 4(c) of the *Act* to immediately and without notice evict the tenant.

Analysis

Section 4(c) of the *Act* provides that if a tenant and a landlord occupy a rental unit where the bathroom and kitchen facilities are being shared then there is no jurisdiction to resolve disputes under the *Residential Tenancy Act*.

I accept the evidence before me from the tenant that she did not occupy a rental unit, with shared kitchen and bathroom facilities, with the landlord but with the landlord's son. Based on the testimony of the tenant I accept that the father owns the rental unit and lives in the adjacent side of the duplex. Therefore, the tenant and the landlord's son are co-tenants. I find that the *Act* governs the relationship between the tenant and the landlord.

Therefore, I find that the tenant has been illegally locked out of the rental unit and the landlord is in breach of the *Act*. The landlord is obligated to enforce and protect the tenant's rights under section 6 and the landlord is liable for any loss or damage suffered by the tenant due to his breach of the *Act* in illegally ending this tenancy on March 25, 2009.

In the circumstances the tenant no longer requests possession of the rental unit.

I Order that the landlord is to immediately secure and safely store the tenant's personal possessions and property until the tenant can make arrangements to collect her belongings.

Conclusion

I find that the landlord has attempted to end this tenancy outside of the *Act* and as a result the landlord is potentially liable for breaching the *Act*. I find that the landlord is responsible for the tenant's personal property which is currently being stored in an unsecured location. I have ordered the landlord to immediately secure and safely store the tenant's possessions until the tenant can make arrangements to collect her belongings.

Dated April 02, 2009.

Dispute Resolution Officer