



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: OPT

Introduction

This hearing dealt with an application by the tenants for an order of possession for the rental unit. The two tenants and the landlord participated in the teleconference hearing.

At the outset of the hearing the tenants stated that they had served a copy of additional evidence on the landlord in person. The landlord denied having received these documents. A friend of the tenants witnessed the tenants serving the documents on the landlord, but the witness was not available at the time of the hearing to give testimony. I therefore did not admit or consider the tenants' additional documents or amend the tenants' claim to allow a monetary amount. It is open to the tenants to file a further application for monetary compensation.

Issue(s) to be Decided

Should the tenants receive an order of possession for the rental unit?

Background and Evidence

The testimony of the tenants was as follows. On June 17, 2009, the tenant SB met with the landlord and viewed the rental unit. The tenant expressed an interest in renting the house. The landlord did not have an application form, but asked the tenant to write down her references on a piece of paper. On June 22, 2009 the tenant called the landlord, and the landlord said he would be interested in renting to the tenants. Both tenants met with the landlord on June 25, 2009, and at that time they paid the landlord the security deposit. On the same day, the tenants had some people help them to begin moving their possessions to the rental house. On June 26, 2009 the landlord

called the tenants and said that the tenants could not move in because two of the people who had been helping with their move were drug addicts, and the woman was a prostitute. The landlord gave the tenants a cheque for the amount of their security deposit and locked up the rental house.

The response of the landlord was as follows. The rental unit has not yet been re-rented. The tenants' possessions have been moved into the garage. The landlord told the tenants when he took their security deposit that he had not yet confirmed their application, and if he did not approve them he would return the security deposit. The tenants requested but the landlord did not give them a key to the rental house.

The landlord stated that the tenants committed fraud; namely, the tenant SB said that she and the other tenant, RM, were married, and she gave the landlord her spouse's last name as her last name, when in fact that was not her last name; the other tenant, RM, was not in fact employed; the reference that SB provided was not the property owner; and the tenants did not have a bank account, as they claimed, because they used Money Mart.

Analysis

In considering whether the tenants ought to receive an order of possession for the rental unit, I must determine whether the landlord and tenants entered into a tenancy agreement, and if so, whether the landlord acted properly under the *Residential Tenancy Act* to terminate the tenancy.

Section 20 of the Act states that a landlord must not take a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement. In this case, the landlord accepted the security deposit on June 25, 2009, and by doing so the landlord entered into a tenancy agreement with the tenants on that date. If the landlord had not yet confirmed the tenants' application to his satisfaction, he ought not to have accepted a security deposit from the tenants.

Section 16 of the Act states that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into. Section 12 of the Act states that the standard terms are terms of every tenancy agreement whether or not the tenancy agreement is in writing. In this case, the rights and obligations of the landlord and the tenants began to take effect under an unwritten tenancy agreement on June 25, 2009. At that point in time, the landlord had entered into a tenancy agreement with the tenants and he therefore could only end the tenancy by a method set out under the Act.

Section 44 of the Act sets out the ways a tenancy ends. If a tenant does act to end a tenancy or agree in writing to end the tenancy, the landlord may only end the tenancy by issuing an appropriate notice to end tenancy or by applying for an order to end the tenancy early. In this case, the tenants did not agree to end the tenancy. The landlord did not issue a notice to end tenancy or make an application to end the tenancy early. Therefore, the landlord in this case did not take appropriate steps under the Act to end the tenancy.

I find that as the tenancy agreement commenced on June 25, 2009 and the landlord did not have the authority to summarily end the tenancy, the tenants are entitled to an order of possession for the rental unit.

Conclusion

I grant the tenants an order of possession. The order must be served on the landlord. If the landlord does not comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Dated July 9, 2009.