

DECISION

Dispute Codes OPR FF
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Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession based on other reasons and to recover the cost of the filing fee from the Tenants for this application.

The Tenant filed seeking Orders to have the Landlord comply with the Act, for the Tenant to obtain an Order of Possession, to allow the Tenant access to the rental unit, and to authorize the Tenant to change the locks.

Service of the hearing documents by the Landlord to the Tenants was done in accordance with section 89 of the *Act*, served personally by the Landlord to the Tenants. The three Tenants who appeared at the hearing confirmed receipt of the hearing documents.

Service of the hearing documents by the Tenant (1) to the Landlord was done in accordance with section 89 of the *Act*, served personally by the Tenant to the Landlord. The Landlord confirmed receipt of the Tenant (1)'s hearing documents.

The Landlord, Tenant (1), Tenant (2), and Tenant (3) appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Is the Landlord entitled to an Order of Possession under section 55 of the *Residential Tenancy Act*?

Is the Tenant entitled to Orders a) of possession; and b) to have the Landlord comply with the Act; and c) to allow the Tenant access to the rental unit; and d) to authorize the Tenant to change the locks to the rental unit under sections 62, 54, 30, and 70 of the *Residential Tenancy Act*?

Background and Evidence

Five co-tenants entered into a written fixed term tenancy agreement effective August 1, 2008 which switched over to a month to month tenancy after August 1, 2009.

Tenant (2) testified and confirmed that she provided the Landlord written notice dated January 11, 2010, to cancel the tenancy effective February 28, 2010.

The Landlord confirmed that he received the written notice to end tenancy on either January 11, 2010 or January 12, 2010 and that he is seeking an Order of Possession effective February 28, 2010.

Tenant (1) testified that he entered into a contract with one of the original co-tenants which states that Tenant (1) entered into this agreement “for the remainder of the lease entered upon by (the original co-tenant’s name). I agree to all terms and conditions of the lease”. Tenant (1) referred to this as a sublet from the original co-tenant and confirmed that he paid a security deposit and first month’s rent to the original co-tenant and afterwards paid his rent by handing the rent to one of the other co-tenants who then handed all co-tenants’ rent to the Landlord.

Tenant (1) confirmed that he vacated the rental unit prior to today’s hearing and advised that he wishes to withdraw his application for dispute resolution.

Analysis

Upon careful review of the testimony and documentary evidence I find that Tenant (1) was assigned the original tenancy agreement from one of the original co-tenants. Assignment is defined as the act of transferring all or part of a tenant’s interest in or rights under a lease or tenancy agreement to a third party, who becomes the tenant of the original landlord.

I do not accept Tenant (1)’s argument that he sublet from the original co-tenant because in order to qualify as a “sub-lessee” the sublease must be for a shorter period than the original lease so that the original lessee can retain a reversionary interest in the property. The contract entered into by the original co-tenant and Tenant (1) clearly states that it is for “the remainder of the lease entered into”; therefore I find that the agreement is an assignment.

Co-tenants are jointly and severally liable for the terms of the rental agreement. #13 of the *Residential Tenancy Policy Guidelines* provides that if the tenancy is a periodic

tenancy and one of the co-tenants provides proper notice to end the tenancy the tenancy agreement will end on the effective date of the notice for all the tenants. In this case Tenant (2) has provided proper notice to the Landlord and the tenancy has ended for all tenants effective February 28, 2010. Based on the aforementioned, I hereby approve the Landlord's request for an Order of Possession effective February 28, 2010 pursuant to section 55(2)(a) of the Act.

I hereby award the Landlord recovery of the \$50.00 filing fee.

The Tenant has withdrawn his application for dispute resolution.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **February 28, 2010 at 1:00 p.m., after service on the Tenants**. This order must be served on the Respondent Tenants and may be filed in the Supreme Court and enforced as an order of that Court.

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$50.00**. The order must be served on the respondent Tenants and is enforceable through the Provincial Court and enforced as an order of that Court.

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: February 25, 2010.

Dispute Resolution Officer