



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This fixed term tenancy started on October 15, 2010 and expired on May 31, 2011. The Parties participated in a previous hearing on April 21, 2011 at which the Tenant was successful in obtaining monetary award and was granted leave to deduct certain amounts from future rent.

The Landlord said the Tenant signed a document stating that he would vacate the rental unit on May 31, 2011 and that this was witnessed by another tenant of the rental property. The Landlord said she did not give the Tenant a copy of this document in her evidence package for this hearing but that he received it for their previous hearing held in April. The Tenant denied signing a document agreeing to move out at the end of May, 2011 and the witness to the Notice to End Tenancy document was not available to give evidence at the hearing. Upon learning this, the Tenant left the conference call and did not dial back in although the hearing continued for a further 15 minutes.

At this point, the Landlord claimed that ever since the previous hearing she has been residing in the rental property and she shares kitchen facilities with the tenants. Consequently, the Landlord argued that there is no jurisdiction to hear *her application*.

Analysis

Section 4(c) of the Act says that the Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

In the parties' previous proceeding held on April 21, 2011 the Dispute Resolution Officer found that "the owner attends the [rental property which is a boarding house] on a daily basis to carry out cleaning and repairs." The Landlord claimed that she now uses the rental property as her permanent residence and shares kitchen facilities with the Tenant. However, I find that this is contradicted by other evidence. At the beginning of the hearing the Landlord repeatedly said she was frustrated because and claimed there was little she could do "from here," meaning she was not present in the community where the rental unit is located. I further note that on the Landlord's application that she filed on June 1, 2011, she listed a day time telephone number which includes the area code for Alberta. In the absence of any reliable or corroborating evidence from the Landlord that she is currently residing in the rental unit on a permanent basis, I find that there is insufficient evidence to conclude that she is doing so and as a result, I find that there is jurisdiction under the Act to deal with her application in this matter.

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist to end the tenancy. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will need to provide additional, corroborating evidence to satisfy the burden of proof. The Landlord relied on a written statement purportedly signed by the Tenant that he would vacate the rental unit on May 31, 2011. The Tenant denied that he agreed in writing to end the tenancy on May 31, 2011. The person listed as a witness to the Tenant's signature was not available to give evidence at the hearing.

Based on the written submissions of the Tenant, however, I find that he did sign a notice ending the tenancy effective May 31, 2011. In particular, the Tenant wrote in response to the Landlord's claim that "***I have agreed that I can move [but only] if she refund me in cash plus give me back my security deposit in cash.***" Consequently, I conclude that the Tenant did agree in writing to move at the end of his lease but later changed his mind when the Landlord failed or refused his request to pay his security deposit and any compensation left owing (or not yet deducted from rent) that was ordered in the previous hearing.

Consequently, I find pursuant to s. 55(2)(d) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after service of it on the Tenant. However, given that the Landlord argued two completely contradictory points of view and was not being forthright in her evidence, I find that this is not an appropriate case to reimburse her the \$50.00 filing fee for this proceeding and that part of her application is dismissed without leave to reapply.

Conclusion

An Order of Possession to take effect 2 days after service of it on the Tenant has been granted to the Landlord and a copy of it must be served on the Tenant. The Order must be served on the Tenant and may be enforced in the Supreme Court of British

Columbia. The Landlord's application is dismissed with 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: June 23, 2011.

Residential Tenancy Branch