



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, RPP, OPT, LRE, LAT

Introduction

This conference call hearing was convened in response to the tenant's application for cancellation of a 10 Day Notice to End Tenancy; to order the landlord to comply with the Act, regulation, or tenancy agreement; to obtain an Order of Possession of the rental unit; to suspend or set conditions on the landlord's right to enter the rental unit; to authorize the tenant to change locks to the unit; and to return the tenant's personal property.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to cancellation of the notice to end tenancy?

Is the tenant entitled to an Order of Possession?

Is the tenant entitled to change locks?

Is the tenant entitled to the return of personal property?

Should the landlord be ordered to comply with the Act, regulation, or tenancy agreement?

Should the landlord's right to access the unit be suspended or set with conditions?

At the outset, the landlord, F.P., submitted that the property consists of shared accommodations and therefore argued on the basis of jurisdiction. After soliciting much

clarification, F.P. stated that the rental unit consists of a 5 bedroom townhouse, that she rents the whole unit for \$1700.00 per month from the owner who does not live on the property. She said that 5 tenants live in the unit including herself, that they all share one kitchen and two bathrooms, and that this tenant's rent is \$400.00.

Section 4(c) of the Act states that; the Act does not apply to living accommodations in which the tenant shares a bathroom or kitchen facilities with the owner of that accommodation. F.P. stated she was renting the house and appeared confused when asked if she was the landlord, to which she hesitated and replied that the owner was.

Whether or not the owner is the landlord, I note that the 10 Day Notice to End Tenancy was served by J.P. I have determined that F.P. is a tenant who sub-lets the property to other tenants and as such she has assumed the role of landlord in this tenancy.

Therefore I find that the Act does apply in this matter, and that pursuant to Section 5 the Act cannot be avoided.

Background and Evidence

The landlord testified that she sub-lets to 5 other tenants. She said that she entered into a verbal tenancy agreement with the tenant that started on February 19th. She stated that the tenant did not pay the rent for August, and harangued at length about problems with the tenant.

The tenant testified that the property is occupied by 7 other tenants; that the landlord does not reside in that unit; and that she has other units that she manages in similar fashion. He stated that he moved in and signed a tenancy agreement on March 1st, but that in spite of several requests, the landlord has not provided him with a copy. He said that he has always paid rent on time; and that the landlord tells him when she will be at the house and that he pays her directly. He said that for August, he paid rent by money

order; however he has not been able to give the order to the landlord. He said that on or about August 15th, 2011, he returned home to find that his room had been emptied and packed away. He said that he called the police and that the landlord was ordered to return his belongings and allow him back into his room. The tenant said that as of August 18th, 2011, the landlord changed the locks, that he is locked out of his room, that he has no access to his belongings, and that he has been staying with friends ever since. He said that he called the police and that the officers told him that it was a civil matter and that they had no authority to break the door down.

In his documentary evidence, the tenant provided a copy of his receipts for rent paid on time since the start of his tenancy, including a copy of the money order for August rent dated August 8th, 2011.

Analysis

I find the landlord's testimony vague and non-specific. The tenant's testimony was coherent, and supported with documentary evidence. The landlord provided no documentary evidence. Although I accept that the landlord has not received rent for August, I am not convinced that she made herself available to allow the tenant to hand over his monetary order. Therefore I order that the 10 Day Notice to End Tenancy be set aside.

Concerning the outstanding rent; Section 26(1) of the *Act* specifies in part that a tenant must pay the rent when it is due under the tenancy agreement whether or not the landlord complies with the Act. I hereby order that the landlord meet with the tenant to allow the tenant to pay his rent forthwith.

Pursuant to section 29 of the Act, I find that the landlord had no legal authority to enter the rental unit and to remove the tenant's belongings; I hereby order the landlord to return the tenant's belongings forthwith.

Section 31(1) of the Act states: “*A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.*” I hereby order the landlord to provide the tenant keys and access to the rental property, and I further order the landlord to comply with the Act and to cease and desist immediately from entering or accessing the tenant’s room or personal belongings, unless authorized under section 29 of the Act.

Conclusion

I grant the tenant an Order of Possession effective forthwith. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

If the landlord fails to comply with any of the above, the tenant is at liberty to make an application for dispute resolution and apply for compensation as applicable.

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: September 01, 2011.

Residential Tenancy Branch