



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, O, OPC

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An Order of Possession - Section 55;
2. An Order to recover the filing fee for this application - Section 72.

The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy with Tenant A, who appeared at the hearing, and a third party began on November 22, 2010. The third party left the unit and a new tenancy agreement was orally entered into with Tenant A and Tenant B on April 1, 2011. A different rent of \$715.00 became payable monthly at this time. The Landlord currently holds \$357.50 as a security deposit, of which \$187.50 was paid in November 2010 and \$170.00 was paid in April 2011. The unit is located in the basement suite of the Landlord's residence.

The Landlord states that on December 31, 2011, Tenant B provided a written notice to end the tenancy (the "Notice") for January 31, 2012. The Landlord states that he signed and dated his acceptance of the Notice on the same day. The Landlord states that after giving the Notice, the Tenants asked to stay longer and the Landlord agreed to extend the tenancy to February 28, 2012. The Landlord accepted the rent payment for February 2012 and provided receipts noting that the monies were accepted for use and occupancy only. The Landlord states that the Tenants informed the Landlord on February 2, 2012 that they were not moving out of the unit.

Tenant A states that the Notice was not a Notice to end tenancy for both Tenants but merely a courtesy to the Landlord to inform that Tenant B would be moving out of the unit. Tenant A states that at the beginning of January 2012, Tenant A spoke with the Landlord to advise the Landlord that only Tenant B was moving out and that Tenant A had no desire to end the tenancy. Tenant A states that the Landlord initially verbally agreed to allow Tenant A to remain in the unit but then changed his mind. Tenant A argues that the Notice is not valid as it was not dated and did not contain the address of the unit. The Advocate states that Tenant B has a disability and was confused at the time of writing the Notice and that Tenant B does not wish to end the tenancy either. The Advocate points to a letter dated January 17, 2012 from the Ministry of Social Development as evidence of the disability, adds that Tenant B is on lithium and as a result is disoriented and confused.

The Landlord states that when Tenant A requested a continuation of the tenancy with Tenant A alone, the Landlord informed the Tenant to discuss the matter with the second Landlord. The Landlord states that this did not occur and that both Landlords agreed not to enter into a new tenancy agreement with Tenant A.

Analysis

Co-tenants are two or more persons who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for and have equal rights under a tenancy agreement. If one tenant gives proper notice to end the tenancy, the tenancy will end on the effective date of the notice to end tenancy and all tenants must move out. Given the undisputed evidence of the Parties, I find that Tenant A and Tenant B are co-tenants under an oral tenancy agreement and therefore that either Tenant may end the tenancy.

Section 52 of the Act provides that a notice to end tenancy must, inter alia, give the address of the rental unit. The Tenant argues that because the Notice did not contain the address of the unit, the Notice is not valid. As no evidence was provided that the Parties were uncertain about which unit the Notice was provided for or that any deception around the address of the unit was involved, I find that this missing requirement does not affect the substantive validity of the Notice. Both Parties were well aware that the Notice was intended for the basement suite in the Landlord's house. Further, although the Tenant argues that the Notice is also invalid as Tenant B was confused due to a disability, I find that the letter provided as evidence of such disability does not substantiate the Tenant's confusion due to the disability and as such does not affect the validity of the Notice.

Section 55 of the Act provides that a landlord may request an Order of possession where a notice to end tenancy has been given by the Tenant. Given the above findings on the co-tenancy and validity of the Notice, I find that the Landlord is entitled to an Order of Possession. The Landlord is also entitled to recovery of the \$50.00 filing fee and I order the Landlord to retain this amount from the security deposit,

Conclusion

I grant an Order of Possession to the Landlord effective 1:00 p.m. February 29, 2012. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court. **I order** that the Landlord retain \$50.00 from the security deposit. 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 21, 2012.

Residential Tenancy Branch