



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT

Introduction

This hearing dealt with an Application for Dispute Resolution seeking an order of possession.

The hearing was conducted via teleconference and was attended by the applicant, the respondent, and the respondent's legal counsel.

The applicant testified that she had not received evidence from the respondent served in a method that is acceptable under the *Residential Tenancy Act (Act)*. The respondent's counsel confirmed that the applicant was served with the respondent's evidence via email on August 1, 2012.

The parties initially agreed to an adjournment to allow the respondent to serve the applicant in accordance with the *Act* and after the applicant had provided both the respondent and myself with her mailing address. The applicant later requested that the hearing be conducted at its original time because of the time line to schedule the reconvened hearing. The hearing continued and I heard all matters related to this Application.

The applicant then submitted the respondent's evidence was served late and as such it should not be considered. I had reviewed the evidence and with the exception of a letter dated July 12, 2012 from the respondent's legal counsel to the applicant all of the relevant evidence submitted by the respondent was the same as what the applicant had submitted.

As such, and in conjunction with the tenant's receipt of the evidence by email, I find the applicant was sufficiently served with the respondent's evidence for the purposes of this hearing and pursuant to Section 71(2)(c) I have considered all relevant evidence from both parties.

The respondent's legal counsel questioned jurisdiction on these matters because the respondent currently has other tenants living in the rental unit who are unaware of these proceedings. I find the respondent has raised a complication in the circumstances but not a matter of jurisdiction. I noted to both parties that I would consider this issue further but I find this issue has no bearing on the matter or Application before me.

Issue(s) to be Decided

The issues to be decided are whether the applicant is entitled to an order of possession, pursuant to Section 54 of the *Act*.

Background and Evidence

The applicant submits that on or before June 29, 2012 she and the respondent entered into a tenancy agreement, first verbally and then both parties signed a written tenancy agreement on June 29, 2012.

Both parties provided a copy of a tenancy agreement, obtained off of the Residential Tenancy Branch website, that identifies the applicant as the tenant and the respondent as the landlord for a month to month tenancy beginning July 15, 2012 for the monthly rent of \$900.00 due on the 15th of each month. The agreement stipulates the applicant must pay a security deposit of \$450.00 by July 15, 2012.

The respondent submits that this document was not in fact a tenancy agreement but that when he signed the document he did so underneath the space allotted for a tenant's signature because he was not accepting the applicant as a tenant but as a "prospect tenant". The respondent did not insert any additional language in to the document to explain the change in the use of the document.

The respondent testified that this is how he usually files out Residential Tenancy Agreements with prospective tenants but he also stated that he does not do it with everyone who applies to be a tenant.

The parties agree that on July 2, 2012 there was an altercation between the two parties, after which the respondent advised the applicant that he would not be renting to her. The parties agree the applicant provided the respondent with a cheque for her first month's rent and her security deposit but that this was returned to the applicant.

Analysis

Section 54(1) of the *Act* states a tenant who has entered into a tenancy agreement with a landlord may request an order of possession of the rental unit by making an application for dispute resolution.

The three tenets of contracts are capacity, consensus and consideration. In this case, neither party is arguing an issue of capacity, for example no one has indicated that either party was mentally incapacitated at the time of the discussions on tenancy or the signing of the documents related to this case.

I find the document submitted into evidence that is identified as a Residential Tenancy Agreement states specifically that the document is a residential tenancy agreement between the respondent and the applicant; it stipulates terms of a tenancy, including all

of the standard terms of a tenancy agreement as required by the *Act*; and is signed by both parties.

Under Section 1 of this document it states in subsection 2 “Any change or addition to this tenancy agreement must be agreed to in writing and initialled by both the landlord and the tenant. If a change is not agreed to in writing, is not initialled by both the landlord and the tenant or is unconscionable, it is not enforceable.”

Despite the respondent’s submission that he was merely accepting the applicant as a prospect tenant, I find no alteration to the residential tenancy agreement that was either agreed to or initialled by the respondent.

I find the act of simply signing the document in a different location on the agreement, than the location that is allocated on a stock form, does not impact or change the purpose of this document and I find the parties achieved consensus and entered into a tenancy agreement.

As to consideration, I note that the agreement itself stipulated the respondent did not have to provide to the respondent either the security deposit or the first month rent any earlier than July 15, 2012 and as such there was no requirement for consideration, at the time the respondent rejected the agreement. However, I accept that the applicant attempted to provide the respondent with the security deposit and the first month rent but that it was the respondent who rejected the cheque.

For these reasons, I find the parties entered into a tenancy agreement to begin on July 15, 2012; naming the applicant as tenant and the respondent as landlord; and for the terms identified in the agreement.

Section 54(2) states the director may grant an order of possession to a tenant under this section before or after the date on which the tenant is entitled to occupy the rental unit under the tenancy agreement.

As the landlord has identified the rental unit is currently occupied by different tenants, I find it necessary to grant occupancy to this tenant with as little impact on the third party tenants as possible. As such and allowing for the landlord to end the tenancy with the third party tenants in accordance with the *Act*, I find the earliest this tenancy may begin is October 1, 2012.

Further, I note the parties are at liberty to discuss and make alternate living arrangements for the tenant until the effective date of possession and the tenant remains at liberty to file an Application for Dispute Resolution seeking compensation for any loss or damage she may have suffered.

Conclusion

I find the tenant is entitled to an order of possession effective **October 1, 2012 after service on the landlord**. This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order with the Supreme Court of British Columbia and be 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: August 07, 2012.

Residential Tenancy Branch