



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MNDC, and FF

Introduction

This application was brought by the landlord on September 14, 2012 seeking an Order of Possession on the claim that the tenants had breached a mutual agreement to end the tenancy by remaining in the rental unit after having accepted consideration. The landlord also sought a monetary award for loss or damage under the legislation or rental agreement.

Issue(s) to be Decided

This matter requires a decision as to whether the landlord is entitled to an Order of Possession and a Monetary Order as requested.

Background and Evidence

This tenancy began on September 1, 2012. Rent was set at \$900 per month, although the tenants paid only \$850 of that and had not paid the required \$450 security deposit. The rental unit is owned by the landlord and is in a strata property.

I must note that this hearing was made extremely difficult by the unruly conduct of the female tenant who repeatedly interrupted proceedings with extended loud interjections despite repeated direction to desist.

During the hearing, the landlord gave evidence that the primary matter in dispute arose when the tenants had signed a mutual agreement to end the tenancy on September 9, 2012 in exchange for the landlord returning the tenants' rent paid for September 2012 plus an additional \$450, an amount totalling \$1,300.

The landlord stated that she had initially become concerned when the strata manager advised her that there had been a number of complaints about the tenant bothering other tenants in the building by asking for rides, money, telephone use, and in one instance, baking soda, the uses of which can include cutting illicit drugs. Two complaints were in writing.

The landlord had also been concerned when learning that a local radio station and newspaper had carried a caution issued by police about the female tenant as having 28 counts of fraud, theft and assault against her.

Consequently, the landlord attempted to reach the tenant to discuss these concerns but the telephone was not answered.

On September 9, 2012, the landlord was contacted by the strata manager out of concern that a water leak in a unit above had intruded into the rental unit. The landlord telephoned, then knocked on the door three times over an hour before using her key to enter at the urging of the strata manager. The female tenant was home.

While the strata manager was inspecting for water intrusion, the landlord raised the issue of the police report and misrepresentations on the application for tenancy. The tenant stated that the landlord had not asked about such specifics on the application but did not deny she was the person named.

The parties then embarked on negotiations to end the tenancy immediately and settled on the \$1,300 payment from the landlord to the tenancy in exchange for immediate vacant possession and return of the keys. The tenants returned the keys, the landlord's friend paid the \$1,300 and the tenants left.

The tenant vehemently denied having signed the mutual agreement to end the tenancy and to having been paid the \$1,300.

However, on examining her signature on the mutual agreement against her signature on a hand written document signed on August 31, 2012 in which the parties agree that the coming tenancy was contingent on favourable references, noting the security deposit would be due, etc.

I have also examined signature against the Strata Property Form K, on which tenants agree to abide by the bylaws of the strata corporation.

I have not the slightest doubt that the signatures on the Mutual Agreement are authentic.

The landlord waited for the tenants' call to give them entry to remove the balance of their belongings which came on September 11, 2012. The landlord arrived at approximately 1:45 p.m. and reported the following events.

- The tenants were present with two other persons at the balcony, one of whom was changing the lock;
- The female tenant stated they were not leaving as the Residential Tenancy Branch had advised her they could get three months free rent;
- The tenant told the landlord to get the "f...." off the property;
- The tenant uttered threats and profanity, including referring to the landlords friend, a black man, with a racist label;
- The tenant apparently left a butcher knife atop the front door which fell when the landlord attempted entry and then waved another knife at the landlord;
- Taunted the landlord for having been so easily duped

Police were called and after interviewing the parties determined that the dispute was a Residential Tenancy matter.

Analysis

Section 44 of the Act sets out the mechanisms under which a tenancy ends and includes at subsection 44(1)(c) when, "the landlord and tenant agree in writing to end the tenancy."

By her conduct at the hearing, including length outbursts, intemperate comments and refusal to comply with requests for reasonable decorum, I find that I can place little or no credence in the evidence of the tenant.

I note that the tenant stated that she was packed and ready to move, but would only do so if the landlord appeared and paid moving expenses.

The landlord's evidence was supported by written submissions of other parties and substantial documentation in support of her claims including the application for tenancy, conditional acceptance, rental agreement and the mutual agreement to end the tenancy.

I find that the tenants had no lawful right to re-enter the rental unit as they did on September 11, 2012 and that the tenants have remained in the rental unit without having paid rent for October 2012 and having accepted return of their partial September rent payment plus the \$450 in consideration for leaving the tenancy on September 9, 2012.

Therefore, I find that the landlord is entitled to an Order of Possession to take effect immediately on service of it on the tenants.

I further find that the landlord is entitled to a monetary order calculated as follows:

To return \$1,300 September 2012 rent and early moving bonus	\$1,300.00
Move-in fee required by strata corporation	100.00
Filling fee	<u>50.00</u>
TOTAL	\$2,350.00

Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect immediately on service of it on the tenants.

The landlord's copy of this decision is also accompanied by a Monetary Order for **\$2,350.00**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

The landlord remains at liberty to make application for any damage as may be ascertained when she had regained possession of the rental unit.

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: October 18, 2012.

Residential Tenancy Branch