



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, AAT

Introduction

This hearing was scheduled to deal with a tenant's application for an Order of Possession and for the tenant, or his guests, to be allowed access to and from the rental unit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

I noted that neither party had provided supporting documentation or evidence prior to this hearing. This decision is based upon the tenant's Application for Dispute Resolution and verbal testimony.

The landlord stated that she had only 10 minutes available to attend the hearing as she had a school course to attend, as a student. As I had been satisfied the landlord was duly served with notice of this hearing nearly one month prior, on February 8, 2013, and considering the seriousness of the matter before me, I informed the landlord that I would be proceeding with this hearing, as scheduled. The landlord confirmed that she would continue to participate in the hearing; however, she proceeded to be disruptive despite my instructions to cease. Shortly thereafter, the landlord disconnected from the teleconference call on her own accord. I continued to hear from the tenant after the landlord exited the conference call. I left the conference call open during the remainder of the hearing in the event the landlord tried to re-enter the conference call.

Issue(s) to be Decided

1. Is the tenant entitled to an Order of Possession?
2. Is it appropriate to issue orders to the landlord to permit the tenant access to and from the rental unit?

Background and Evidence

The parties participated in a previous dispute resolution proceeding on January 8, 2013 (file no. 802391) and a decision was issued January 14, 2013. By way of that decision a 10 day Notice to End Tenancy for Unpaid Rent issued in December 2012 was set aside and the tenancy continued.

The tenant testified that on February 2, 2013 he returned to the residential property to find the locks to the front and rear doors of the building had been changed and he had not been provided advance notice of such or a copy of the new keys. The tenant had another tenant let him in the building and he was able to enter his suite once he was in the building.

The tenant testified that on February 4, 2013 the locks to his rental unit were changed even though his possessions were in the rental unit and he had been residing in the rental unit. The tenant called the police and showed the police the decision of January 18, 2013.

The tenant explained that he went to work February 5 through 8, 2013 and did not return to the rental unit those days. The tenant returned to the property February 8, 2013 to find the locks changed and his unit inaccessible. The tenant filed this Application for Dispute Resolution February 8, 2013 and has been residing with a friend since then.

During one of the landlord's outbursts the landlord stated the tenant had been sent to jail. The tenant acknowledged that he was arrested February 10, 2013 for uttering threats toward the person who had changed the locks for the landlord and found to be in the tenant's unit.

The tenant requested that a third party, Shawn Robert Biddle, be named as his agent for purposes of serving and/or enforcing the Order of Possession and any other Order that accompanies this decision.

Analysis

Under the Act, a landlord must not change the means of access (ie: locks) to a residential property without giving all tenants a copy of the new key(s). Further, a landlord must not change the means of access to the rental unit without gaining the tenant's consent and giving the tenant a copy of the new key.

Based upon the tenant's undisputed testimony I accept that the tenant was still in possession of the rental unit and had not abandoned the unit as of February 2, 2013 or February 4, 2013 when the landlord changed the locks to the building and the rental unit.

I was not provided evidence that would indicate the tenancy had otherwise ended. Even so, in cases where a tenancy does come to an end and the tenant continues to occupy the rental unit, the landlord must not change the locks or otherwise take possession of the rental unit. Rather, the court bailiff has the authority to do so upon issuance of a Writ of Possession by The Supreme Court of British Columbia. Before applying for a Writ of Possession the landlord must serve the tenant with an Order of Possession provided to the landlord by the Residential Tenancy Branch. The landlord has not been provided an Order of Possession for this tenancy.

As I have found the tenant had not abandoned the rental unit and the landlord was not in receipt of an Order of Possession, I find the landlord illegally restricted access to the property and took possession of the rental unit by changing the locks to the building and the unit without giving copies of the new keys to the tenant.

In light of the above, I find the tenant entitled to possession of the rental unit and **I provide the tenant, or his appointed agent, with an Order of Possession to serve upon the landlord and enforce as necessary. The Order of Possession is effective two (2) days after it is served upon the tenant.**

Further to the above, I ORDER the landlord to provide the tenant, or his appointed agent, with copies of keys to the building and the rental unit.

As provided in Fact Sheets available to landlords and tenants by the Residential Tenancy Branch:

Illegal eviction

It is against the law for a landlord to:

- physically evict a tenant, or
- change the locks without a Residential Tenancy Branch order to do so, or
- seize a tenant's personal property without a court order, or
- use the services of a bailiff firm that does not have a contract with the Ministry of Attorney General to evict a tenant to perform these services. Only officers appointed as court bailiffs may legally evict a tenant pursuant to a Writ of Possession.

A landlord who illegally evicts a tenant may be fined up to \$5,000 and may be required to reimburse costs incurred by the tenant as a result.

The tenant remains at liberty to file a future Application for Dispute Resolution seeking monetary compensation from the landlord for illegal eviction and/or loss of personal property, as appropriate.

Conclusion

The tenant is entitled to access the residential property and possession of the rental unit. The tenant has been provided an Order of Possession effective two (2) days after service upon the landlord. The landlord has been ORDERED to provide the tenant, or his appointed agent, with keys to the building and 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: March 07, 2013

Residential Tenancy Branch

