



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD

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. A Monetary Order for unpaid rent - Section 67; and
3. An Order to retain the security deposit - Section 38.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Preliminary Matter

At the onset of the Hearing the Tenant stated that she did not receive any evidence from the Landlord other than the notice of hearing. The Tenant states that she received this document by registered mail on February 2, 2014. The Landlord states that the evidence package containing the tenancy agreement, notice to end tenancy, proof of service and a letter in relation to utilities was sent to the Tenant by registered mail on February 4, 2014. The Landlord provided the tracking number for this mail. Given the registered mail evidence, I find it likely that the Landlord did serve the Tenant.

Issue(s) to be Decided

Is the dispute under the jurisdiction of the Act?

Is the notice to end tenancy valid?

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to recovery of the filing fee?

Relevant Background and Evidence

The Parties entered into a tenancy agreement with a start date of September 1, 2013 on a month to month basis. Rent of \$1,200.00 is payable monthly on the first day of each month and at the onset of the tenancy the Landlord collected \$600.00 as a security deposit.

The Tenant states that she had been in an off and on again relationship with the Landlord over the past 5 years and that in December 2013 the Parties agreed to live together at the unit. The Tenant states that they also planned to renovate the unit and to find another home together. The Tenant states that they looked at homes together and went shopping for furniture and looked at paint for the renovations. The Tenant states that the Landlord had also asked the Tenant to quit her job and accompany him while he drove truck. The Tenant states that no rent was discussed as the Landlord stated that he would pay the mortgage while they were living together. The Tenant states that the Landlord lived with the Tenant until January 27, 2013. The Tenant states that although the Landlord said he would move his clothes into the unit after a call from his mother on January 4, 2013 no clothes were ever moved in.

The Landlord states that on January 15, 2014 he served the Tenant personally with a 10 day notice for unpaid rent. The Landlord provided an affidavit of service indicating that the service was witnessed by a third party. The Tenant states that she did not receive any such notice from the Landlord. The Landlord states that there were several witnesses to the service and the Tenant ripping up the document. The Tenant agrees that she ripped up the notice and states that as she was not a tenant the notice had no application to her living in the unit.

The Landlord states that while they were in an intimate relationship, he never lived with or promised to live with the Tenant, never looked at other places to live together, never told the Tenant to quit her job and never said he was moving in with the Tenant. The Landlord states that he resides with his mother and has only spent occasional nights

with the Tenant while he was not on the road or at his own home. The Landlord states that the Tenant has failed to pay rent for January and February 2014 and claims \$2,400.00.

Analysis

Section 4 of the Act provides that the Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation. I take the word “shares” to require a context within which the owner resides in some part of the overall living accommodation. Given the undisputed evidence that the Landlord never moved his clothing into the unit, I find that the Landlord did not reside in the unit and therefore the Act does apply.

Section 55 of the Act provides that a landlord may request an order of possession of a rental unit by making an application for dispute resolution where a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired. Section 46 of the Act provides that a tenant may, within 5 days after receiving a notice to end tenancy for unpaid rent, pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. If a tenant does not pay the rent or make an application to dispute the notice, the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the unit by the effective date of the notice. Given the Tenant’s agreement that the Notice was ripped up, I find that the Tenant was served the Notice and did not dispute this Notice. As a result, I find that the Tenant is conclusively presumed to have accepted the end of the tenancy, must move out of the unit and that the Landlord is entitled to an order of possession. In relation to the rent claim however, I find the Tenant’s evidence of the relationship and the mutual decision to live together as of January 1, 2014 to be compelling and the Landlord’s denials to be unconvincing. I accept therefore that in the circumstances there was an implied agreement that the Tenant would pay no rent from January 1, 2014. As a result, I dismiss the Landlord’s claim for unpaid rent.

As the Landlord provided no oral evidence in relation to the utilities but considering that this may have been unintentional, I give the Landlord leave to reapply on any utilities owed to December 31, 2014. As the tenancy is ended but the Tenant has yet to move out of the unit, I dismiss the Landlord's claim to the security deposit with leave to reapply.

Conclusion

I grant an Order of Possession to the Landlord. 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.

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 20, 2014

Residential Tenancy Branch

