



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT

Introduction

This hearing was convened in response to an application by the Tenant pursuant to Section 54 of the *Residential Tenancy Act* (the "Act") for an Order of Possession.

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

Issue(s) to be Decided

Is the Tenant entitled to an order of possession?

Background and Evidence

The Tenant states that she was living in an upper unit of the building with her father and that on May 2, 2014 the Landlord agreed to rent a lower unit to the Tenant and another co-tenant with rent payable of \$900.00 per month. The Tenant states that the Landlord told her she could move into the unit during the month of May 2014. The Tenant states that the Landlord agreed to transfer her security deposit from the original unit to the new unit and that the co-tenant was to pay the remaining security deposit on May 10, 2014. The unit was empty in May 2014 and the Tenant states that the Landlord had also agreed to pay her for work on this unit during May 2014 and that the income from this work would go towards May 2014 rent. The Tenant states that she started this work and on May 10, 2014 was given the keys to the unit to occupy but on the same day the Landlord asked for the keys back and the Tenant returned the keys to the Landlord.

The Tenant states that she is still living in the original unit and wants possession of the unit that was taken away from her.

The Landlord agrees that there was an arrangement for the Tenant to rent the lower unit but that the arrangement was conditional on the acceptance of the co-tenant. The Landlord agrees that the Tenant's security deposit from the upper unit was to be transferred if the Tenants were accepted for the lower unit. The Landlord states that no rental or security monies were ever collected by the Landlord. It is noted that the Landlord's written submissions set out that monies were sent to the Landlord for the Tenants and were returned without acceptance by the Landlord. The Landlord states that the Tenant was given the keys to the lower unit on May 10, 2014 as the Tenant was having difficulties with her father and that the Landlord was attempting to help the Tenant out. The Landlord states that rent was required for May 2014 and that the Tenant did some work for the Landlord to pay for this rent. The Landlord states that due to the conduct of the Tenant and co-tenant the Tenant was told to return the keys to the unit and that the Tenant did so voluntarily. The Landlord states that the co-tenant did not meet their requirements and as the rental of the unit was conditional on the acceptance of the co-tenant who did not "check out" there was never any rental agreement entered into. The Landlord states that the unit has since been rented and is no longer available. There is no written tenancy agreement.

Analysis

Section 54 of the Act provides that a tenant who has entered into a tenancy agreement may request an order of possession. Considering the overall evidence of both Parties and in particular the undisputed evidence that an agreement to rent the unit was in place conditional on the acceptance of the co-tenant, the Landlord's evidence that they did receive rental monies provided on behalf of the Tenants prior to May 10, 2014 and the Landlord's evidence that the keys were thereafter provided to the Tenant, I find on a balance of probabilities that that the Landlord acted impliedly to accept the co-tenant and that the Parties entered into an oral tenancy agreement that started on May 10, 2014. I also find that given the Tenant's return of the keys to the unit, the Tenant acted

to accept the end of the tenancy on the same date. As such, I find that the Tenant is not entitled to an order of possession and I dismiss the Tenant's application.

Conclusion

The Tenant's application is dismissed.

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: July 18, 2014

Residential Tenancy Branch

