



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, FF (OPB)

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession because the tenant has breached an agreement with the landlord. The landlord withdrew their request to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord's agent attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The parties agreed that this tenancy started on June 01, 2014 for a fixed term tenancy of a year. Rent for this unit is \$1,300.00 per month. The parties agreed that they had signed a mutual agreement to end the tenancy effective on August 06, 2014 at 12.00 p.m.

The landlord's agent testified that the tenant has vacated the unit; however, the tenant's boyfriend who was not a tenant of the unit but rather just an occupant has refused to leave the rental unit. This occupant informed the landlord's agent that he needs more time to find somewhere else and has no money to move out. The landlord's agent testified that she had explained to this occupant that he is not a tenant and must vacate the rental unit.

The tenant testified that she actually vacated the unit on July 25, 2014 but her boyfriend would not move out and has prevented the tenant from removing her belongings from the unit. The tenant agreed that as her belongings are still in the unit that she still therefore has possession of the unit.

The landlord requested an Order of Possession effective two days after service because the tenant has breached the mutual agreement to end the tenancy on August 06, 2014.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. When a tenancy agreement names a party as a tenant any other party occupying the rental unit and not paying rent is deemed to be an occupant of the rental unit and not a tenant. As such the tenant is responsible for any occupants that the tenant has allowed to reside in the unit. That occupant has no rights or obligation under the *Residential Tenancy Act (Act)* and as such must vacate the rental unit when the tenant moves out.

The parties had agreed that the tenancy would end on August 06, 2014 by signing a mutual agreement to end the tenancy. This agreement also states that the tenant, occupants and any guests must also vacate the rental unit. The tenant agreed that she remains in possession of the unit as her belongings and this occupant remain in the unit.

Section 55 (2)(d) of the Act states :

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(d) the landlord and tenant have agreed in writing that the tenancy is ended.

I am satisfied from the evidence before me that the landlord and tenant have agreed in writing that the tenancy will end on August 06, 2014 and that the tenant or an occupant of the tenant remains in possession of the rental unit. I therefore uphold the landlord's application for an Order of Possession pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two (2) days after service on the tenant**. This Order must be served on the tenant. If the tenant fails to comply with this Order, the Order may be filed in the Supreme Court 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: September 04, 2014

Residential Tenancy Branch

