Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   OPB, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession based upon a mutual agreement to end tenancy. Both parties appeared or were represented at the hearing and were provided the opportunity to make <u>relevant</u> submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be determined:

Is the landlord entitled to an Order of Possession?

Background and Evidence

On June 14, 2013 the parties entered into a co-tenancy agreement set to commence July 1, 2013 for a fixed term that expired January 1, 2014. The tenancy continued on a month-to-month basis upon the expiry of the fixed term. The tenants were required to pay rent of $1,200.00 on the 1st day of every month. The rental unit is an "upper suite" in a house on a strata lot.

On August 8, 2014 the landlord and the male tenant executed a Mutual Agreement to End Tenancy to be effective October 1, 2014. The tenants did not move out of the rental unit by October 1, 2014 and the landlord proceeded to file this Application for Dispute Resolution on October 7, 2014. The tenants continue to occupy the rental unit. The landlord accepted monies from the tenants for "use and occupation" of the rental unit for the months of October and November 2014.

The tenant orally provided several submissions concerning the tenancy and the Mutual Agreement to End Tenancy, including:

1. The end of this tenancy is due to the landlord failing to inform the tenants the rental unit was on a strata lot and that having two rental units in the house was non-compliant.
2. The enforcement of the strata by-laws is due to a "crazy strata lady" as known as the strata council president.
3. When the landlord approached the tenant about ending the tenancy or renting the entire house, the tenant asked the landlord to provide documentation to him the following day but the landlord came prepared with a Mutual Agreement to End Tenancy and gave it to the tenant.
4. The tenants considered renting the enter house but determined they could not afford it.
5. The landlord "quilt tripped" the tenant into signing the Mutual Agreement claiming the landlord was unable to afford to continue the rental of the upper suite only.
6. The tenant felt intimidated into signing the Mutual Agreement because the landlord showed up with his wife, two children and family dog.
7. The landlord told the tenant that he would help the tenants find other accommodation but only suggested one unit to them that the tenant did not want to rent.
8. The tenant's mother, the co-tenant, did not sign the Mutual Agreement although there is space for two tenants to sign the document.
9. The tenant was unaware of his rights when he signed the Mutual Agreement.
10. Although the landlord gave the tenant receipts indicating "use and occupation" and "this does not reinstate the tenancy" when the landlord was given money for the months of October and November 2014 the tenant considered the acceptance of the money to constitute a reinstatement of the tenancy.

The landlord explained that his wife and children and family dog often accompanied him to the rental unit and this was not intimidation tactics. The landlord did not deny that non-compliance with strata by-laws was a reason for ending the tenancy but pointed out there were other reasons including the tenant's violation of the tenancy agreement by having two dogs and the tenant's use of profanity that caused the basement suite tenants to move out. The landlord asserted that these reasons were explained to the tenant before the Mutual Agreement was signed.

The landlord was agreeable to an Order of Possession effective January 1, 2015 so as to provide the tenants more time to find accommodation. The tenant indicated that he has been looking for other accommodation and it has been difficult to find something suitable and affordable; but that they would move out sooner if other accommodation became available. The landlord stated that if the tenants vacate the rental unit on or before December 1, 2014 he shall waive any entitlement to receive 30 days of advance

written notice and will not hold the tenants liable for loss of rent for December 2014. Should the tenants remain in possession of the unit after December 1, 2014 the landlord expects to receive monies for their use and occupation.

Analysis

The Act provides for ways a tenancy comes to an end. One of the ways to end a tenancy is by way of a mutual agreement to do so, in writing. Upon review of the Mutual Agreement to End Tenancy I find the parties duly executed a written agreement to end tenancy effective October 1, 2014.

In consideration of the tenant's submissions, I provide the following responses:

The landlord was within his right to propose or request a mutual agreement to end tenancy and present the tenant with the appropriate documentation to memorialize the agreement. The reasons for seeking a mutual agreement to end tenancy are really irrelevant since the other party has a choice to: accept, reject or make a counter-proposal. It is upon the parties to determine their respective rights under the Act and real and understand the documents that they sign. I am satisfied the tenant accepted and agreed to end the tenancy, in writing, effective October 1, 2014 based upon the document he signed.

I find the tenant did not put forth any reasonable grounds for me to conclude the Mutual Agreement was entered into by way of coercion or duress.

The tenancy agreement provided for my review demonstrates the parties entered into a co-tenancy agreement. A co-tenancy is where there is more than one tenant under a single tenancy agreement and co-tenants are jointly and severally liable under the Act. Where one co-tenant takes action to end the tenancy the tenancy ends for all co-tenants and it is unnecessary to have all co-tenants sign a Notice to End Tenancy or a Mutual Agreement to End Tenancy. The provision of space for two co-tenants to sign a Mutual Agreement to End Tenancy is provided as a convenience and does not over-ride the provisions of the Act.

Finally, reinstatement of a tenancy or withdrawal of an agreement to end the tenancy is achieved by mutual agreement of both parties, either expressly or implied. Reinstatement of a tenancy may be implied by way of the parties' actions, including payment and acceptance of rent after a tenancy has ended. In this case, the landlord clearly communicated to the tenant that accepting money for October and November 2014 did not represent a reinstatement of the tenancy to him but that the money

reflected the continued use and occupation of the rental unit by the tenants for those months. Therefore, I am satisfied there was no reinstatement or waiver of the Mutual Agreement to End Tenancy by way of a mutual agreement to do so.

In summary, I find the landlord has presented a valid and enforceable Mutual Agreement to End Tenancy and the tenant did not present any basis for me to conclude that it should be not be enforced. Therefore, I grant the landlord's request for an Order of Possession effective January 1, 2015.

I further award the landlord recovery of the $50.00 paid for this Application for Dispute Resolution as I find the tenants were in violation of their Mutual Agreement when the landlord made this Application for Dispute Resolution. I authorize the landlord to deduct $50.00 from the tenants' security deposit in satisfaction of this award.

Conclusion

The landlord has been provided an Order of Possession effective January 1, 2015, as requested.

The landlord has been authorized to deduct $50.00 from the tenants' security deposit to recover the filing fee paid for this Application for Dispute Resolution.

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: November 19, 2014

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Residential Tenancy Branch