



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB O

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on November 20, 2014, to obtain an Order of Possession for breach of an agreement and to obtain Orders for other reasons.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each party gave affirmed testimony and confirmed receipt of documents served by the Landlord. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has this tenancy ended?
2. Is the person who remains in the rental unit a Tenant or an Occupant?

Background and Evidence

In support of their application the Landlord provided documentary evidence which included, among other things, copies of: a written tenancy agreement; a Mutual Agreement to End Tenancy signed by both parties; and a 4 page written statement.

The Landlord testified that she and her husband purchased the property in 2009. Their daughter H.K. was the first of their four daughters who rented the property from 2009. H.K. had initially had a roommate reside in the property with her but when the roommate

moved out their other daughter J.K. moved into the property in August 2011 and both daughters paid rent. In February 2014 H.K. moved out and a written tenancy agreement was executed listing J.K. as tenant.

The month to month tenancy agreement commenced on February 1, 2014, for the monthly rent of \$1,000.00 that was payable on the first of each month. No security or pet deposits were required to be paid.

The Landlord submitted that while they were away on vacation in October 2014, the Tenant, J.K. allowed a friend, K.P., to move into the rental unit, without their permission. This friend has since gotten involved in drugs and has taken over the property. The Landlord testified that they are fearful that he may cause their daughter harm and possibly cause damage to their property.

The Landlord testified that despite them having a written tenancy agreement indicating rent was \$1,000.00 per month their daughter has recently only been paying \$500.00 per month. The Landlord was insistent that they have never received rent money from the Tenant's friend K.P., or anyone else other than their two daughters, throughout the entire time J.K. has been occupying the rental property as a Tenant.

The Tenant testified that K.P. had been a friend of hers and that she agreed to allow him stay with her as a temporary arrangement. She stated that he told her he had no other place to go so she tried to help him; however, he went back on drugs shortly after he moved in with her. She said she attempted to lock him out but he told the RCMP he was a tenant and she was forced to let him back into the rental unit.

The Tenant submitted that she has since moved out of the rental property, for her own safety. She has removed most all of her possessions.

The Landlord testified that on November 20, 2014, they attended the rental unit with the RCMP and were granted access to remove most of the Tenant's possessions. The Tenant stated that most of the remaining items were garbage. The Landlord noted that there were still some pieces of furniture, such as a bookcase, inside the house, that belonged to the Tenant. The Landlord argued that they cannot gain access to the remaining property at this time.

In closing, the Landlord stated that K.P. keeps calling them and telling them that he will not move out unless they give him money. They are extremely concerned for their Tenant's safety and are worried that once K.P. knows they have had this hearing he may cause serious damage to their property.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 44 of the *Residential Tenancy Act* (Act) stipulates as follows:

- (1) A tenancy ends only if one or more of the following applies:
 - (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 [*tenant's notice*];
 - (ii) section 46 [*landlord's notice: non-payment of rent*];
 - (iii) section 47 [*landlord's notice: cause*];
 - (iv) section 48 [*landlord's notice: end of employment*];
 - (v) section 49 [*landlord's notice: landlord's use of property*];
 - (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
 - (vii) section 50 [*tenant may end tenancy early*];
 - (b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
 - (c) the landlord and tenant agree in writing to end the tenancy;**
 - (d) the tenant vacates or abandons the rental unit;**
 - (e) the tenancy agreement is frustrated;
 - (f) the director orders that the tenancy is ended.
- [My emphasis added in bold].**

In this case the evidence included a written Mutual Agreement to End Tenancy effective November 20, 2014, and the Tenant vacated the property as of November 20, 2014, leaving only a few pieces of furniture behind.

Based on the above, I find that this tenancy ended effective November 20, 2014, pursuant to sections 44 (1)(c) and 44(1)(d) of the Act. Accordingly, there is no requirement to issue an Order of Possession, as the Landlord is entitled to full and immediate possession of the property once the tenancy has ended.

In regards to the Landlord's request for Orders for other reasons, in the matters relating to the remaining occupant, K.P. I find as follows:

Section 1 of the Act defines a "**landlord**", in relation to a rental unit, to include any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, **other than a tenant occupying the rental unit**, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

[My emphasis added in bold]

The evidence suggests that K.P. has told the RCMP that he is a tenant because he has paid his girlfriend, the Tenant, rent. Based on the above definition, I find that the Tenant could not be considered a landlord to K.P. as she is a tenant and continued to reside in the rental unit.

In common law an "occupant" may be considered to be a person who is not a tenant but who lives in a rental unit as their principal place of residence. A "roommate" is a person who, like an occupant, shares a room with a tenant or shares a rental unit or part of it with a tenant.

An occupant is defined in the *Residential Tenancy Policy Guideline Manual*, section 13 as follows: where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the original tenancy agreement, unless all parties (owner/agent, tenant, occupant) agree to enter into a tenancy agreement to include the new occupant as a tenant.

Section 34(1) of the Act provides that unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.

Based upon the foregoing, I find K.P. is not a tenant; rather, he is an occupant.

Conclusion

I HEREBY FIND K.P. to be an Occupant who has no rights or obligations under the *Residential Tenancy Act*.

As noted above, the Tenant's tenancy ended November 20, 2014 and she has vacated the rental unit; therefore, there is no requirement to issue the Landlord an Order of Possession. As such, it is my finding that the Landlord is entitled to full and immediate vacant possession of their rental property, pursuant to section 62 of the *Residential Tenancy Act*.

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: December 05, 2014

Residential Tenancy Branch

