



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT

Introduction

This is an application filed by the tenant to obtain an order of possession of the rental unit.

Both parties attended the hearing by conference call and gave testimony. Both parties have confirmed receipt of the submitted documentary evidence of the other party. As both parties have attended the hearing and have confirmed receipt of the submitted documentary evidence of the other party, I am satisfied that both parties have been properly served.

Issue(s) to be Decided

Is the tenant entitled to an order of possession?

Background and Evidence

The tenant states that the landlord is trying to evict him under the previous tenant, J.D. The tenant states that the landlord has obtained an order of possession through a previous dispute with the other tenant. The tenant states that he has rent receipts issued for occupancy only.

The tenant has submitted a copy of a writ of possession issued by the Supreme Court of British Columbia dated February 2, 2015, copies of 4 hand-written receipts dated November 17, 2014, December 10, 2014, January 7, 2015 and January 21, 2015 for occupancy only. The landlord has also submitted a copy of a Court Summary Sheet which states that the tenant had applied without notice for a return to the rental unit which was dismissed.

The landlord has confirmed that an order of possession was granted to her on September 16, 2014 and a writ of possession was granted on February 2, 2015. The landlord confirmed the tenant's evidence that the tenant's application to obtain an order of possession in the Supreme Court of British Columbia was stayed until February 10,

2015 pending a hearing on February 6, 2015. The landlord confirmed that on February 6, 2015 the application was dismissed.

The landlord states that the bailiffs are unwilling to enforce the writ of possession as the tenant has filed an application for dispute resolution seeking an order of possession.

The tenants seek an order of possession of the rental unit.

Analysis

Section 54 of the Residential Tenancy Act speaks to the tenant's request for an order of possession and states,

54 (1) A tenant who has entered into a tenancy agreement with a landlord may request an order of possession of the rental unit by making an application for dispute resolution.

(2) The director may grant an order of possession to a tenant under this section before or after the date on which the tenant is entitled to occupy the rental unit under the tenancy agreement, and the order is effective on the date specified by the director.

(3) The date specified under subsection (2) may not be earlier than the date the tenant is entitled to occupy the rental unit.

A definition of a "tenant" under the Residential Tenancy Act is defined as,

"tenant" includes

- (a) the estate of a deceased tenant, and
- (b) when the context requires, a former or prospective tenant.

The landlord states that no tenancy agreement was entered into by both parties. The tenant states that he entered into an agreement and has provided copies of 4 receipts issued for rent from the tenant to the landlord. The landlord disputes this stating that the payments were made for occupancy only as stated on the issued receipts because the tenants were still occupying the rental unit and were refusing to vacate it. The landlord states that the tenants have refused to abide by an order of possession issued

by the Residential Tenancy Branch and a writ of possession that was issued by the Supreme Court of British Columbia.

I find that the applicant is an occupant is not a tenant as defined under the Residential Tenancy Act. The applicant confirmed in their testimony that they were not the registered tenant under the signed tenancy agreement with the landlord. The landlord was granted an order of possession for the rental unit against the tenant under a different Residential Tenancy Branch File Number which states,

I authorize and order you, J.D., Tenant, and any other occupant of the rental unit to deliver full and peaceable vacant possession and occupation of the above noted rental unit to A.F, Landlord, no later than 1:00 pm on September 30, 2014.

I find that no tenancy agreement was entered into by both parties and that the landlord accepted payments for use and occupancy only.

I accept the evidence of both parties and find that an order of possession has already been issued to the landlord from the Residential Tenancy Branch and a writ of possession has been issued by the Supreme Court of British Columbia for enforcement.

The application for an order of possession by the tenant is dismissed.

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: March 5, 2015

Residential Tenancy Branch

