



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIRST SERVICE RESIDENTIAL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, O

Introduction

This hearing was convened by way of a telephone conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement. The Tenant also applied for ‘Other’ issues but none were identified during the hearing.

The Tenant and an agent for the Landlord (the “Landlord”) appeared for the hearing and provided affirmed testimony throughout the hearing. The Tenant had an assistant who did not provide testimony.

The Landlord confirmed that she had received the Tenant’s Application by registered mail and both parties confirmed receipt of each other’s documentary evidence received prior to the hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party and the witness on the evidence provided. I have considered the evidence provided by the parties in this case but I have only documented the evidence which I relied upon to make findings in this decision.

Issues to be Decided

- Has the Tenant disclosed a basis on which he is entitled to monetary compensation under the Act, regulation or tenancy agreement?
- Has the Tenant provided sufficient evidence to show the Landlord breached the Act, regulation or tenancy agreement by ending the tenancy illegally?

Background and Evidence

The Landlord testified that this tenancy began with two other renters ("SF" and "JW"), the full names of whom appear on the front page of this decision. SF and JW rented the suite on September 1, 2014 for a fixed term tenancy that was due to end on September 31, 2015 in the amount of \$975.00 per month.

The Landlord testified that JW vacated the rental unit without paying rent on November 1, 2014. As a result, SF found the Tenant to join her in the same tenancy so that the full payment of rent could be satisfied. The Tenant testified that he joined SF's tenancy on November 7, 2014 at which point he began to pay half of his rent portion directly to the Landlord. The Tenant explained that he did not pay a security or pet damage deposit because it was not requested by the Landlord. The Landlord confirmed that one was not requested from the Tenant because one had already been paid by SF and JW at the start of the tenancy which was still in effect for the tenancy.

The Tenant explained that on December 28, 2014, he had an argument with SF and as a result the police were called and the Tenant was asked to leave the rental suite. The Tenant claims that he was out of the rental suite for two days figuring out with the police what his rights were under the Act and whether he was a party to this tenancy.

The Tenant testified that on his return to the rental unit on December 31, 2014, he was provided with a handwritten notice by SF who explained to him that the Landlord wanted to end their tenancy at the end of January 2015 for cause. The Tenant claims that the eviction notice was illegal and unfounded, although he did not have a copy to provide into written evidence.

The Tenant explained that when he contacted the Residential Tenancy Branch about this issue he informed them that he was not going to be able to pay his rent. However, the Tenant stated that the Residential Tenancy Branch informed him that if he were to make an Application to dispute the notice to end tenancy he would not have to pay rent. As a result, the Tenant made his Application on December 31, 2014. However, the Tenant did not apply to dispute the notice to end tenancy on the Application but wrote in the details section of the Application that it was an "unlawful eviction" and submitted a Monetary Order Worksheet detailing a monetary claim in the amount of \$6,400.00.

The Landlord explained that she had served SF with a proper 1 Month Notice to End Tenancy for Cause (the "One Month Notice") on December 31, 2014 because the Tenant and SF had been arguing and that she had enough. The Landlord provided a copy of the One Month Notice into written evidence.

The Landlord testified that on January 3, 2015, SF gave her notice to end the tenancy (the "SF's' Notice") effective for January 31, 2015. The Landlord provided SF's Notice into written evidence; I note that the SF's Notice indicates that the Tenant was subletting the rental unit from SF.

The Landlord explained that she had offered to the Tenant that as the tenancy was being ended by SF and through the One Month Notice, the Tenant could have another suite in the building or he could move out early at which point his rent for January 2015 would be refunded and he could store his belongings for free in the building until he found a new place.

The Landlord testified that the Tenant did not have money to pay for a security or pet damage deposit for another rental suite and was not willing to move out earlier than January 31, 2015. The Landlord explained that based on this, SF left the suite earlier because she did not want to stay there with the Tenant until the end of January 2015. As a result, the Tenant's rent cheque for January 2015 was cashed and the Tenant left the rental suite at the end of January 2015.

The Landlord submitted that the Tenant was not physically forced to leave the rental suite but was informed that his tenancy was due to end at the end of January 2015. The Tenant submitted that the Landlord had failed to put him on the tenancy agreement, had failed to give him a proper notice to end the tenancy without any proof that it was served on him, or offer him to sublet the unit or continue a tenancy with him. The Tenant claims that he was illegally evicted and forced to leave the tenancy and now seeks monetary compensation.

When the Tenant was asked about his monetary claim, the Tenant stated that this amount related to 1 month of hotel stay and three months of rent which he needs because he has been homeless. The Tenant explained that he will also have to get money to pay for his security and pet damage deposit for his next place. When the Tenant was asked to verify these losses, the Tenant submitted that he had not incurred any of these expenses but he needed this money in order to get a new rental unit.

Analysis

In analysing the Tenant's Application, I must first make a determination in which capacity did the Tenant enter into this tenancy. In order to do this I refer to Policy Guideline 15 to the Act which provides guidance on the rights and responsibilities of Co-tenants and states:

“A tenant is the person who has signed a tenancy agreement to rent residential premises. If there is no written agreement, the person who made an oral agreement to rent the premises and pay the rent is the tenant. Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.”

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

Where co-tenants have entered into a fixed term lease agreement, and one tenant moves out before the end of the term, that tenant remains responsible for the lease until the end of the term. If the landlord and tenant sign a written agreement to end the lease agreement, or if a new tenant moves in and a new tenancy agreement is signed, the first lease agreement is no longer in effect.”

[Reproduced as written]

The Act defines a “**tenancy agreement**” as an agreement, whether written or **oral**, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

Based on the foregoing, I make the following findings. The Tenant confirmed that he had paid his rent directly to the Landlord and that he joined SF’s tenancy because JW had left. The Tenant also confirmed that he did not pay a pet damage or security deposit to SF or to the Landlord when he started to rent the suite with SF. The Landlord acknowledged that the Tenant paid his rent directly to her and it was undisputed that he was a joint renter with SF in the same tenancy.

Although SF’s Notice indicates that the Tenant was subletting the rental suite from SF, I find there is insufficient evidence to support this. I find the evidence suggest that the original tenancy of SF and JW had not been ended with any written notice to end the tenancy even though JW had vacated the rental suite. I find that the Landlord and Tenant established through an oral agreement that the Tenant would become a Co-tenant in the continuing tenancy under the same terms and conditions as when the tenancy had been established on September 1, 2014.

Therefore, the provisions of Co-tenants in a tenancy would apply in this case. Policy Guideline 15 to the Act continues to state:

“If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants. If any of the tenants remain in the premises and continue to pay rent after the date the notice took effect, the parties may be found to have entered into a new tenancy agreement. The tenant who moved out is not responsible for carrying out this new agreement”.

[Reproduced as written]

As a result, I accept the Landlord’s testimony that SF, who was one of the Co-Tenants, was served with the One Month Notice on January 31, 2015 which was undisputed by any of the Co-tenants. More importantly, I accept that SF provided a written notice to end the tenancy for the same date. Therefore, the tenancy was legally ended in accordance with the provisions of the Act and the Policy Guideline provisions detailed above because SF’s Notice to end the tenancy would have also applied to the Tenant.

Therefore, the Tenant’s claim that the tenancy was ended illegally is unfounded and is not proved. Therefore, the Landlord is not liable for any resulting expenses the Tenant claims to have incurred as a result of having to leave this tenancy. In the alternative, if the Tenant did not become a Co-tenant, his rights would be that of an occupant. As such he would not be protected under the Act. Regardless, I find that the tenancy ended through operation of the Act and I am unable to find the Landlord illegally evicted the Tenant.

Conclusion

The Tenant has failed to prove that the Landlord is responsible for his losses. Therefore, the Tenant’s Application is dismissed **without** leave to reapply.

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: April 01, 2015

Residential Tenancy Branch

