



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Community Builders Benevolence Group
#0955802 BC Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, LRE, OPT

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An Order for the Landlord to comply with the Act – Section 62;
2. An Order suspending the Landlord's access to the rental unit – Section 70; and
3. An Order of Possession – Section 54.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions. No evidentiary or service concerns were raised by either Party.

Issue(s) to be Decided

Is the Landlord not in compliance with the Act or tenancy agreement?

Is the Tenant entitled to the suspension of the Landlord's access to the unit?

Is the Tenant entitled to an order of possession?

Background and Evidence

The tenancy started in 2010 and the current Landlord took over in 2012. Rent of \$475.00 was payable monthly.

The Tenant states that in a previous hearing on May 7, 2015 the Parties reached a mutual agreement to end the tenancy on May 31, 2015 and for the Landlord to return the security deposit to the Tenant on May 12, 2015. The Tenant states that the Landlord did not return the security deposit until July 2015. The Tenant states that on June 29, 2015 the Landlord had a bailiff remove the Tenant from the unit and that since that time the Tenant has been homeless.

The Tenant states that the Tenant sought a review of the Decision dated May 8, 2015 that sets out the mutual agreement and provides an order of possession to the Landlord. The Tenant states that the Decision was also corrected by the Arbitrator on May 22, 2015 to include a provision in the final term of the mutual agreement. The Tenant argues that this Decision as corrected means that a breach of any term invalidates the whole agreement. The Tenant argues that as the Landlord failed to return the security deposit the Tenant was no longer required to vacate the unit. The Tenant argues that the Landlord did not therefore have the right to enforce the order of possession. The Tenant argues that the Landlord wrongfully used an order of possession to obtain a writ of possession of the unit. The Tenant also states that the Landlord obtained the Writ without waiting for the review period to end. The Tenant claims an order of possession for the Tenant's original unit.

The Landlord states that the Decision did not restrict the Landlord from obtaining the order of possession as the Tenant breached the agreement to end the tenancy by telling the Landlord after the hearing that he would not move out of the unit. The Landlord states that they still gave the Tenant two weeks to move out of the unit. The Landlord states that they received the corrected Decision before they hired the bailiff but believed that they still had right to possession of the unit based on the Tenant refusing to move out of the unit. The Landlord states that the Tenant's original unit has been rented and that there are no other units available.

Analysis

Section 63 of the Act provides that a settlement made during proceedings may be recorded as a decision or an order. Given the recording of the mutual agreement and the terms requiring the actions of each Party, I find that the term requiring the Landlord to return the security deposit to the Tenant to be an order. Regardless of whether or not the Tenant expressed an intention to remain in the unit despite the mutual agreement to move out, I do not consider an intention to breach a future term to be a repudiation of the whole agreement. I find therefore that even if the Tenant did express this intention the Landlord was not relieved from meeting its obligation to return the security deposit prior to the Tenant's obligation to move out. As the Landlord did not return the security deposit as agreed, I find that the Landlord did breach the equivalent of an order under the Act.

Section 65 of the Act sets out orders that may be provided upon a breach of the Act or tenancy agreement. These orders or remedies do not include an order of possession of a rental unit to the tenant. Further, accepting the Landlord's evidence that this rental unit is currently in possession of a third party, I cannot make an order that would conflict with the rights of this third party to the unit. As a result I find that the Tenant's claim for an order of possession must be dismissed. As the Tenant's claimed remedy for the Landlord's breaches of the Act cannot be provided it is unnecessary to consider whether the Landlord also breached the Act by enforcing the order of possession. The Tenant has leave to reapply for compensation in relation to the Landlord's actions to obtain possession of the unit.

As the tenancy had ended and the Tenant has received the security deposit I find that there are no longer any requirements for the Landlord to comply with either the Act or the tenancy agreement and I dismiss the claims for compliance or to restrict the Landlord's entry into the unit.

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: August 24, 2015

Residential Tenancy Branch

