



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RPP, LRE, OPT, AAT

Introduction

This hearing dealt with a tenant's application for an Order of Possession; an order for return the tenant's personal property; an order to allow access to and from the property by the tenant or the tenant's guests, and, an order to suspend or set conditions on the landlord's right to enter the rental unit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant 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 Decided

1. Is the tenant entitled to an Order of Possession?
2. Is it necessary and appropriate to issue any other order to the landlord?

Background and Evidence

The one year fixed term tenancy commenced June 1, 2013 and continued on a month to month basis after expiration of the fixed term. The tenant was originally required to pay rent of \$950.00 on the first day of every month. The rent is currently \$1,000.00 per month. The rental unit is a one bedroom condominium unit. The rental unit is occupied by the tenant, the tenant's dog, and from time to time a friend of the tenant (referred to by initials JB).

I heard consistent testimony that in the second or third week of March 2016 the tenant paid a portion of the rent for March 2016 and then left town due to the failing health and ultimate death of a family member. The tenant left JB in the unit carrying for his dog. The tenant's girlfriend paid the balance of rent owed for March 2016 and on April 26, 2016 she paid the balance of rent owed for April 2016. The tenant's girlfriend also paid the rent for May 2016 on April 30, 2016. The payments were made in cash and the landlord did not issue a receipt.

I heard that the landlord posted a notice of entry on the door of the rental unit on April 27, 2016 with a stated entry date of April 30, 2016. Many of the events that transpired on April 30, 2016 were in dispute; however, it is not in dispute that the landlord took the keys to the rental unit and fob for the building from JB.

The tenant submitted that the keys he left with JB were lost or stolen so the deadbolt was re-keyed by JB on April 29, 2016. The tenant claims that he had let the landlord know that they might have to change the locks. The landlord stated that she received no notification or request for authorization to change the locks.

The landlord testified that when she attended the unit on April 30, 2016 her key would not work so she had a locksmith attend the property and change the locks to the rental unit. Around that time JB showed up at the property.

The tenant submitted that the landlord's fiancé demanded and took the keys and fob from JB on April 30, 2016. The landlord stated that JB offered them to her fiancé with an open hand. When the landlord was asked to explain was precipitated the offering of the keys and fob by JB the landlord stated she did not know and that I should ask JB. The landlord did state that she and/or her fiancé advised JB that he was not allowed to occupy the rental unit.

The landlord was of the position that JB had been living in the rental unit with the tenant for approximately one year and the tenant did not have the landlord's authorization to have JB residing in the unit. The landlord also stated that she had started receiving complaints about JB's conduct. The landlord stated that there is no agreement in the tenancy agreement that would authorize the tenant to have another occupant live in the unit with him although the landlord conceded that if the tenant had his girlfriend live with him that would be acceptable. I noted that neither party had provided me with a copy of the tenancy agreement. The landlord responded by stating that she thought he written agreement had expired after the one year fixed term ended.

According to the landlord, JB was provided the opportunity to remove his personal possessions from the rental unit but that JB declined as he had to return to work.

As for the tenant's possessions, the landlord stated that she would have given the tenant the keys and fob to the property if he had returned to town before May 31, 2016. The landlord was of the position that the tenancy came to an end on May 31, 2016.

The tenant is of the position that the tenancy remains in effect and that he is entitled to regain possession of the rental unit by himself and/or JB as his designated agent while the tenant is still out of town dealing with his family member's estate (JB's name is referenced on the cover page of this decision). The tenant also pointed out that his possessions are still in the rental unit and his dog has been in a kennel since the landlord took possession of the unit.

The landlord testified that she orally gave the tenant two month's of notice to end tenancy on April 3, 2016. As for Notices to End Tenancy issued in writing I heard the following submissions.

Both the landlord and tenant provided testimony that the landlord had sent an image of the first page of a *2 Month Notice to End Tenancy for Landlord's Use of Property* to the tenant. The landlord stated that it was sent either April 4 or 5, 2016. The tenant stated that it was sent May 5, 2016 and received on May 11, 2016. When asked to identify the reason for ending the tenancy on the second page, the landlord stated that she could not recall completing the second page and that she did not send the second page to the tenant.

The landlord testified that she also posted a *1 Month notice to End Tenancy for Cause* to the door of the rental unit, with a stated effective date of May 31, 2016. The landlord testified that JB the 1 Month notice from the door that same day. The tenant denied receiving the 1 Month Notice and disputed that JB received the 1 Month Notice on April 30, 2016 since the landlord removed JB's ability to enter the building when the fob was taken away from him.

During the hearing, I informed the parties that I would be ordering the landlord to return possession of the rental unit to the tenant. The landlord indicated she would not comply with my order and asked about the consequences if she did not return possession as ordered. I informed the landlord that failure to comply with my order, as a delegated authority of the Director, would constitute failure to abide by an order of the Director and that such a failure would subject the landlord to administrative penalties and a monetary claim by the tenant.

The landlord also took the position that the unit is uninhabitable. The landlord pointed to photographs of the rental unit and stated that on April 30, 2016 the rental unit was found to be filthy and the carpeting is ruined. The landlord acknowledged that there is not an order from a health, safety or fire inspector that deems the unit uninhabitable and the unit has water, sewer and electricity services. The tenant indicated he wished to respond to the allegations of damage; however, I found it not particularly relevant for this hearing. The landlord also claims to have found drug paraphernalia in the rental unit during the inspection.

I noted that in the landlord's evidence package was a Landlord's Application for Dispute Resolution where the landlord seeks an Order of Possession; however, I noted that the file number is that assigned to the tenant's application. I determined that the landlord has yet to file an Application for Dispute Resolution to seek an Order of Possession. The parties were informed that the landlord retains the right to do so and prove an entitlement to receive an Order of Possession. The tenant confirmed that the service address provided on his Application remains an address at which he can receive mail.

Although both parties alluded to suffering monetary damages due to the actions of the other party, I did not have a monetary claim before me. Both parties remain at liberty to file an Application for Dispute Resolution to seek monetary compensation from the other party.

Analysis

Upon consideration of everything presented to me, I provide the following and findings with respect to the tenant's application.

Under section 28 of the Act, a tenant is entitled to exclusive possession of a rental unit. As the landlord was informed during the hearing, even if a tenant over-holds a unit by not vacating at the end of the tenancy, the landlord must not take actual possession of the rental unit unless the landlord has a Writ of possession issued by the Supreme Court. This is provided under section 57(2) of the Act. A Writ of Possession may be obtained after the landlord obtains an Order of Possession from the Residential Tenancy Branch. In this case, the landlord did not have an Order of Possession or Writ of Possession yet has taken possession of the rental unit.

As for having guests or occupants, section 30(1) provides:

30 (1) A landlord must not unreasonably restrict access to residential property by

(a) the tenant of a rental unit that is part of the residential property, or

(b) a person permitted on the residential property by that tenant

[Reproduced as written with my emphasis added]

If having an additional occupant in the rental unit is a breach of a material term of the tenancy agreement the landlord's remedy is to issue a breach letter to the tenant, give the tenant a reasonable amount of time to correct the breach, and if the breach is not corrected to serve the tenant with a 1 Month Notice to End Tenancy for Cause.

If JB's conduct is disturbing other or damaging the property, the landlord's remedy is to end the tenancy by serving the tenant with a 1 Month Notice to End Tenancy for Cause; or, apply for an early end of tenancy if the circumstances are so severe as to warrant an early end of tenancy.

It is clear to me that JB was permitted on the property by the tenant. Although the landlord testified that a 1 Month Notice was posted on the door of the rental unit on April 30, 2016 the landlord took JB's ability to access the property away on that same day and the tenancy was still in effect. Pursuant to section 30, the landlord did not have the right to restrict JB's access to the property on April 30, 2016.

As to whether the tenant is entitled to regain possession of the rental and the landlord's position that the tenancy ended May 31, 2016 I find the tenancy remains in effect and the tenant is entitled to occupy the rental unit as of this date. Even if I were to accept that the landlord posted a 1 Month notice to End Tenancy for Cause on the door of the unit on April 30, 2016 and I found the deeming provision of section 90 of the Act to apply, the tenant would be considered in receipt of the 1 Month Notice three days after posting or May 3, 2016. As such, the effective date of the 1 Month Notice would be June 30, 2016 at the earliest.

Section 44(1)(d) of the Act provides that a tenancy ends when a tenant vacates or abandons a rental unit; however, I find that did not occur in this case. On April 30, 2016 when the landlord took the keys from JB and on May 31, 2016 when the landlord alleges the tenancy came to an end, the tenant's belongings were still in the rental unit and the rent had been paid for May 2016 which is inconsistent with vacating or abandoning a rental unit.

In light of the above, I am satisfied that the tenancy remains in effect at this time and the tenant is entitled to occupancy of the rental unit for himself or a person he permits on the property. Accordingly, I provide the tenant with an Order of Possession as requested by the tenant. The Order of Possession is effective immediately upon service upon the landlord. I further authorize and order that JB may serve the Order of Possession upon the landlord and the landlord will have to provide the means of access (keys and fob) to the property to JB upon service.

As I have granted the tenant an Order of Possession I find it unnecessary to further issue orders with respect to return of his personal property as he shall be at liberty to access and retrieve his personal possessions by regaining possession of the rental unit.

I further order that both parties, including their agents, must not change the locks to the rental until except as provided under the Act.

I make no order to suspend or set conditions on the landlord's right to enter the rental unit and the landlord's right to enter the rental unit remains as provided under section 29 of the Act.

Conclusion

I have found that the tenancy is in effect of this date and the tenant has been provided an Order of Possession that may be served and enforce upon the landlord by the tenant and/or the tenant's agent JB. The landlord has been ordered to provide the tenant and/or JB the means of access (keys and fob) immediately upon receipt of the Order of Possession.

Both parties have been ordered not to change the locks to the rental unit again except as provided under the Act.

I have dismissed the tenant's request for return of personal property as I have provided him with orders necessary to regain possession of the rental unit.

The landlord retains the right to enter the rental unit pursuant to section 29 of the Act.

The landlord remains at liberty to file an Application seeking an Order of Possession as appropriate in the circumstances.

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: June 14, 2016

Residential Tenancy Branch