



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, AAT, LAT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession of the rental unit pursuant to section 54;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70.

The tenant attended the hearing via conference call and provided undisputed affirmed testimony. The landlord did not attend. The tenant stated that the landlord was served with the notice of hearing package and the submitted documentary evidence in person on August 26, 2016. The tenant has provided a copy of a signed statement from the person who served the package in the company of a witness. The tenant also stated that additional documentary evidence was served to the landlord's mailing box on September 6, 2016. I accept the undisputed affirmed evidence of the tenant and find that the landlord was properly served as per sections 88 and 89 of the Act. The landlord is deemed sufficiently served as per section 90 of the Act.

It was clarified with the tenant that no documentary evidence was received from the landlord. As such, in the absence of any evidence regarding service of the landlord's 3 documentary evidence submissions, I find that the tenant was not properly served. As such, the landlord's documentary evidence is excluded and shall not be considered for this hearing.

I waited 6 minutes past the start of the scheduled hearing time and commenced the hearing in the absence of the landlord. After 28 minutes the hearing was concluded with no appearance made by the landlord.

During the hearing the tenant clarified that his selections for an order to be allowed access to or from the rental unit (AAT) and authorization to change the locks (LAT) were made in error and would be resolved in the tenant's remaining request for an order of possession of the rental unit.

The tenant also clarified that the landlord has asserted that the Residential Tenancy Branch has no jurisdiction in this matter. The tenant provided undisputed affirmed testimony that although the rental property is shared with the landlord/owner, the tenant has a separate bathroom and a separate kitchen along with his own living area which is shared with a roommate. I find that as the landlord has failed to appear to put forth the claim of no jurisdiction and that there is no evidence to the contrary that the hearing may proceed.

Issue(s) to be Decided

Is the tenant entitled to an order of possession of the rental unit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant provided undisputed affirmed evidence that this tenancy began on August 1, 2016 for a 3 year fixed term tenancy. The tenant stated that there was no signed tenancy agreement and that this arrangement was made verbally. The monthly rent was \$450.00 payable on the 1st day of each month and responsible for 1/3 of the utilities. A security deposit of \$225.00 was paid.

The tenant seeks an order of possession of the rental unit. The tenant clarified that the tenant was served with a handwritten "Eviction Notice" dated August 17, 2016 from the landlord which states in part,

"You are evicted from my premises along with all your belongings at 9:15am, Tuesday, August 30, 2016."

The tenant stated that he was physically locked out of the premises on August 21, 2016 without access to his belongings. The tenant stated that he is currently residing in an emergency shelter. The tenant stated that the landlord has since left Canada on a trip.

Analysis

Section 54 of the Act states, 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.

The tenant stated that the tenancy began on August 1, 2016 on a 3 year fixed term tenancy. In this case, the tenant has provided undisputed affirmed evidence that he was illegally evicted from his tenancy on August 21, 2016. The tenant provided a copy of a hand written, "Eviction Notice" dated August 17, 2016.

Section 52 of the Act states,

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.**

I find that as the landlord has failed to comply with section 52 (e) by using the approved form and that the "Eviction Notice" is of no effect. The tenant's application for an order of possession is granted.

Conclusion

The tenant is granted an order of possession.

The landlord must be served with the order of possession. Should the landlord fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: September 29, 2016

Residential Tenancy Branch

