



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession based upon a mutual agreement to end tenancy. One of the owners of the property and the owners' agent appeared at the hearing (herein referred to as the landlords); however, the tenants did not. The landlord testified that each of the tenants was personally served with a hearing package and evidence on November 17, 2016 at the rental unit address. The landlord stated that he obtained the tenants' initials on the Notice of Hearing to prove the tenants were served. In the absence of any evidence to the contrary, I was satisfied that the tenants were sufficiently served with notification of this proceeding and I continued to hear from the landlords without the tenants present.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

Three co-tenants and one of the owners of the property entered in to a written tenancy agreement on July 25, 2016 and the tenants paid a security deposit of \$900.00. The fixed term tenancy was set to commence on September 1, 2016 and expire on August 31, 2017. The monthly rent was set at \$1,800.00, payable on the first day of every month.

On November 1, 2016 the landlord's agent met with one of the co-tenants (referred to by initials CB). CB and the landlord's agent mutually agreed to end the tenancy as of November 30, 2016. On November 1, 2016 the landlord's agent spoke with the other co-tenant (referred to by initials MJ) over the telephone and MJ orally agreed to vacate the rental unit by November 30, 2016 as well. Tenant CB wrote a letter dated November 1, 2016 indicating she was moving out and the tenancy would be ending November 30, 2016 and describing the conversation she overheard the landlord's agent

have with MJ on the telephone. The landlord's agent wrote a letter dated November 1, 2016 acknowledging receipt of CB's letter and describing the conversation he had with MJ that the tenancy would end effective November 30, 2016. Both of these letters were provided in the landlord's evidence package.

The landlords testified that the tenants did not vacate by November 30, 2016. Tenant CB moved out approximately a week prior to this hearing but the other tenants continue to occupy the rental unit. The landlords acknowledged that the tenants paid for use and occupancy for the month of December 2016 on December 22, 2016. The landlords stated that a receipt for "use and occupancy" only was given to the tenants. The landlords seek to regain possession of the rental unit effective December 31, 2016.

The landlords requested authorization to deduct \$100.00 from the tenant's security deposit to recover the cost of the filing fee paid for this Applicant.

Analysis

Section 55(2) of the Act provides as follows:

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

- (a) a notice to end the tenancy has been given by the tenant;
- (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;
- (c) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term;
- (d) the landlord and tenant have agreed in writing that the tenancy is ended.

[Reproduced as written with my emphasis underlined]

Based upon the undisputed evidence before me, I provide the following findings and reasons.

Upon consideration of the letters written by CB and the landlord's agent on November 1, 2016 I am satisfied that CB and the landlord's agent mutually agreed to end the tenancy as of November 30, 2016 in writing.

I recognize that the other two co-tenants did not agree to end the tenancy in writing; however, where there is a co-tenancy it is sufficient for one of the co-tenants to end the tenancy on behalf of all of the co-tenants and all tenants will have to vacate as agreed upon between the landlord and the tenant. This is provided in Residential Tenancy Policy Guideline 13: *Rights and Responsibilities of Co-tenants* which states, in part:

"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."

Having heard the landlord did not enter into a new tenancy agreement with the remaining tenants and accepted monies for use and occupancy only for the month of December 2016 I am satisfied that a new tenancy has not been created.

In light of the above, I find the tenancy came to an end by mutual agreement in writing, a new tenancy was not created, and the landlord is entitled to regain possession of the rental unit.

Provided to the landlord with this decision is an Order of Possession effective two (2) days after service upon the tenants.

As the landlord was successful in this Application I award the landlord recovery of the filing fee. The landlord is authorized to deduct \$100.00 from the tenants' security deposit in satisfaction of this award. The balance of the security deposit remains in trust for the tenants to be administered in accordance with the Act.

Conclusion

The tenancy has ended due to a written agreement to end the tenancy. The landlord is entitled to regain possession of the rental unit and the landlord is provided an Order of Possession effective two (2) days after service upon the tenants.

The landlord has been authorized to deduct \$100.00 from the tenants' security deposit in order to recover the filing fee paid for this application.

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: December 29, 2016

Residential Tenancy Branch