



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OLC, OPT, AAT, ERP, RP, MNDC, RPP, FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for:

- an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement;
- an Order of Possession;
- access to the rental unit;
- an Order requiring the Landlord to make repairs to the rental unit;
- an Order requiring the Landlord to return personal property to the Tenants;
- a monetary Order for money owed or compensation for damage or loss; and
- to recover the fee for filing this Application for Dispute Resolution.

The Applicant with the initials "D.D.K.", whom I will refer to as the Occupant stated that on December 15, 2016 the Application for Dispute Resolution and the Notice of Hearing, were sent to the Landlord, via registered mail. The Advocate for the Landlord acknowledged that the Landlord received these documents.

On December 23, 2016 the Tenants submitted evidence to the Residential Tenancy Branch. The Occupant stated that these documents were not served to the Landlord. As the documents were not served to the Landlord they were not accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter#2

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the Tenant has identified some issues on the Application for Dispute Resolution, which are not sufficiently related to be determined during these proceedings.

I find that the Tenants' application for an Order requiring the Landlord to make repairs is not sufficiently related to the issues related to the continued occupancy of the rental unit. I therefore dismiss that application, with leave to re-apply.

Issue(s) to be Decided:

Is there a need to issue the Tenants an Order of Possession?

Is there a need to issue an Order requiring the Landlord to provide the Tenants with access to the rental unit?

Is there a need to issue an Order requiring the Landlord to return personal property to the Tenants?

Are the Tenants entitled to compensation for costs associated to the Occupant being prevented from using the rental unit?

Background and Evidence:

The Landlord and the Occupant agree that:

- the Landlord entered into a written tenancy agreement with the first two Applicants named on the Application for Dispute Resolution;
- the tenancy began in the summer of 2016;
- the first two Applicants named on the Application for Dispute Resolution agreed to pay monthly rent of \$900.00;
- the Applicant with the initials "D.D.K.", whom I have been referring to as the Occupant, is the son of the first two Applicants named on the Application for Dispute Resolution;
- the Occupant does not have a verbal or a written tenancy agreement with the Landlord;
- the Occupant has been occupying the rental unit with the permission of his parents since the start of the tenancy;
- the Occupant's parents have been out of the country since October of 2016;
- the Occupant's parents still have personal property in the rental unit; and
- rent has been paid for the period ending December 31, 2016.

The Occupant stated that his parents have paid rent for January of 2017. The Advocate for the Landlord stated that he does not know if the rent cheque for January has cleared.

The Occupant stated that on December 04, 2016 he had an argument with the Landlord and the Advocate for the Landlord. He stated that the argument related to his occupancy and his concern that the Landlord was visiting the unit at 11:00 p.m. He stated that he was threatened during the argument and that he reported the threat to the police.

The Advocate for the Landlord stated that on December 04, 2016 he and the Landlord argued with the Occupant with issues that were unrelated to occupancy of the rental unit.

The Occupant stated that the police attended the rental unit on December 08, 2016 in response to his report of threats. He stated that on December 08, 2016 the police told both parties that they could not determine if the Tenant was permitted to live in the rental unit. He stated that on December 08, 2016 the Landlord told him that he could not live in the rental unit; as a result of that information he returned all keys to the rental unit that he had in his possession; and he has not stayed at the rental unit since that date.

The Advocate for the Landlord stated that the police attended the rental unit on December 08, 2016 in response to the report of threats. He stated that on December 08, 2016 the Occupant was not told that he could not continue to live in the rental unit. He stated that the Occupant returned the keys to the Landlord on December 08, 2016 and he believes the keys were returned because the Occupant no longer felt safe living in the rental unit.

During the hearing the Landlord was advised that keys to the rental unit must be returned to the Tenant. The parties agreed to meet at the Landlord's residence at noon on January 03, 2017, for the purposes of returning the keys to the Occupant.

The Occupant is seeking compensation of \$2,665.00 for costs incurred as a result of being prevented from living in the rental unit.

Analysis:

Section 44(1)(a) of the *Residential Tenancy Act (Act)* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, and 50 of the *Act*. There is no evidence that either party gave written notice to end this tenancy in accordance with these sections and I therefore find that the tenancy did not end pursuant to section 44(1)(a) of the *Act*.

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. As there is no evidence that a fixed term of this tenancy has ended, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act*.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. As there is no evidence that the parties agreed in writing to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act*.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. As there is no evidence that the Tenants have stopped paying rent for the unit, I find that the tenancy did not end pursuant to section 44(1)(d) of the *Act*.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act*.

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act*.

As this tenancy has not ended I find that the Tenants still have the right to occupy and access the rental unit. Although the Tenants still have possession of the rental unit, I am granting the Tenants an Order of Possession in the unlikely event that the Order is necessary to obtain new keys to the rental unit.

Section 30(1)(b) of the *Act* stipulates that a landlord must not unreasonably restrict access to residential property by a person permitted on the residential property by the tenant. As the evidence shows that the Occupant has been permitted to occupy the rental unit by the Tenants, I find that the Landlord does not have the right to prevent the Occupant from living in the rental unit. I therefore Order the Landlord to provide the Occupant with immediate access to the rental unit.

In the event the Landlord has not returned the keys to the rental unit to the Occupant by January 04, 2016, I hereby authorize a licensed locksmith to provide the Occupant with access to the rental unit.

As the Occupant has the right to return to the rental unit, I find there is no need to issue an Order requiring the Landlord to return personal property to the Occupant.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss. In these circumstances the burden of proof rests with the Tenants.

I find that the Tenants have submitted insufficient evidence to establish that the Occupant was obligated to return the keys to the rental unit to the Landlord on December 08, 2016. Even if I accepted the Occupant's testimony that on December 08, 2016 the Landlord told him he could no longer live in the rental unit, I find that the Occupant should have known that he was under no obligation to return the keys. In reaching this conclusion I was heavily influenced by the Occupant's testimony that the police told the parties that they could not determine if the Occupant was permitted to live in the rental unit.

As there is no evidence that the Landlord physically prevented the Occupant from occupying the rental unit or that the Landlord did anything other than tell the Occupant he was not allowed to live in the unit, I find that the Tenants have failed to establish that the Landlord breached the *Act* when they told the Occupant they did not think he was entitled to occupy the unit.

Section 7(2) of the *Act* stipulates, in part, that a tenant who claims compensation for damage or loss that results from a landlord's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. In these circumstances, I find that the Occupant should have taken steps to determine whether he was legally required to return the keys to the rental unit before he did so.

I find that any losses the Occupant incurred as a result of his decision to return the keys to the rental unit would not have been incurred if he had taken reasonable steps to determine whether or not he was required to return the keys. I therefore dismiss the application for compensation as a result of the Tenant being unable to access the rental unit for any period prior to January 03, 2016.

I find that the Tenants' Application for Dispute Resolution has merit and that the Tenants are entitled to recover the fee paid to file this Application.

Conclusion:

I grant the Tenants an Order of Possession that is effective immediately. This Order may be served on the Landlord, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Tenants have established a monetary claim of \$100.00 for the cost of filing this Application for Dispute Resolution and I am issuing a monetary Order in that amount. The monetary Order will not name the Occupant, as he is not a tenant of the unit. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court 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 *Act*.

Dated: January 04, 2017

Residential Tenancy Branch