



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's application: CNC, RPP, OPT, AAT, FF

Landlord's application: ET, FF

Introduction

This was a hearing with respect to the tenant's application to cancel a Notice to End Tenancy, for an order of possession of the rental unit, for an order allowing access to and from the rental unit and for the return of the tenant's personal property. The landlord applied for an early end of tenancy. The landlord's application was set for hearing by conference call on February 1, 2017. The tenant's application was scheduled to be conducted as an in-person hearing at the office of the Residential Tenancy Branch in Burnaby. An in-person hearing was needed because the tenant is deaf and a certified sign language interpreter was required to be present to facilitate communication between the parties. Because an in-person hearing was scheduled and all parties were present the landlord's application was brought forward and addressed at the hearing. The tenant attended the hearing with her mother and Ms. A.H., a certified sign language interpreter. The landlord attended the hearing and he was accompanied by M.G. an occupant of the rental unit and former partner of the tenant who attended as a witness.

Issue(s) to be Decided

Should the tenant be granted an order of possession?
Should the tenant be provided with access to and from the rental unit?
Is the tenant entitled to an order for the return of her personal property?

Should there be an early end of tenancy?

Background and Evidence

The rental unit is a basement suite in the landlord's house in Delta. The rental unit was occupied by the tenant and her former partner, M.G. On December 25, 2016 there was a disturbance in the rental unit between the tenant and M.G. Because of the loud

noises and concerns that there was a fight between the occupants the landlord called the police. The police attended at the rental unit. The tenant was briefly hospitalized but later returned to the rental unit. The tenant acknowledged that she caused damage to the rental unit for which she was responsible. The damage occurred during a fight with M.G. her room-mate and partner when they were both intoxicated.

On December 29, 2016 the landlord presented the tenant with a form of "Mutual Agreement to End a Tenancy". The agreement required the tenant to move out two days later on December 31, 2016. The tenant signed the document, but she was very upset at the time and there was no one present to explain to her what she was signing. The landlord cannot communicate using sign language and the tenant said she did not understand what she was signing. She said she signed it because she felt intimidated and she was still upset and disturbed by the fight with her girlfriend.

The tenant moved out of the rental unit. She testified at the hearing that she does agree that the tenancy has ended and she is no longer seeking to continue the tenancy or move back into the rental unit. The tenant said she has recovered most of her belongings and there is no longer an issue about getting back any of her personal property.

The tenant said she is upset because she believes that she was wrongfully evicted and forced to sign a document requiring her to move with only two days' notice. She testified that she was considering filing a new claim for compensation for her wrongful eviction.

The landlord testified that he caused the tenant to sign the Mutual Agreement to End the tenancy because of the violent disturbance and the damage caused to the rental unit. The damage included damage to a door and to a wall in the rental unit. The landlord has entered into a short term tenancy agreement to rent the unit to M.G. as the sole tenant for a fixed period of two months, ending February 28, 2017.

On January 22, 2017 the landlord submitted additional documents that included a monetary order worksheet setting out a claim for compensation for the repair of damage to the rental unit and for compensation for wage loss to attend the hearing.

Analysis

Because the tenancy has ended, the landlord has possession of the rental unit and has entered into a new tenancy agreement there is no basis for the remedies claimed by the tenant and the landlord in their respective applications. The tenant's application for an order of possession and other relief is therefore dismissed. There is no longer any basis for the landlord's application for an early end of tenancy and it too is dismissed without leave to reapply. The landlord submitted a monetary order worksheet, but he did not apply to amend his application to include a monetary claim and there is no basis for me to treat the filing of late evidence as an amendment to his application. Further a

claim for lost wages to attend a hearing is not a recoverable cost. The tenant and the landlord were both informed that they were at liberty to file new claims to seek compensation, but they were given an opportunity to discuss the prospect of settling potential claims.

Settlement decision

At the hearing the parties were given an opportunity to consider the resolution and settlement of other claims that could be made relating to the tenancy. The tenant agreed to accept the landlord's apology for the inappropriate use of a Mutual Agreement to end her tenancy without proper notice. The landlord apologised for the manner in which he acted to end the tenancy and he agreed to abandon and forego any claims that he may have against the tenant for compensation for damage or repair costs.

The landlord and the tenant have resolved all outstanding claims that can or may arise out of the tenancy or its termination and they each agree that neither party will make any claim against the other related to this tenancy.

Conclusion

The applications of the landlord and the tenant have been dismissed without leave to reapply and all claims relating to the tenancy and its termination have been settled and resolved.

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: January 25, 2017

Residential Tenancy Branch