



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, AAT, FFT, LAT, OPT

Introduction

On September 28, 2017, the Tenant submitted an Application for Dispute Resolution seeking an order of possession for the rental unit and asking for the Landlord to comply with the Residential Tenancy Act (“the Act”), Regulation, or tenancy agreement.

The matter was set for a conference call hearing. The Tenant and the Landlord appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Procedural and Preliminary Issues

The Tenant testified that the Landlord served a copy of her documentary evidence to him at his place of work on October 20, 2017. The Tenant testified that he had an opportunity to review the documents and respond prior to the hearing.

During the hearing, I indicated that I did not have a copy of the Landlord’s documentary evidence before me and I asked her to reference her documentary evidence during the hearing and fax a copy of the documents to the Residential Tenancy Branch following the hearing. Following the hearing, and prior to receiving the Landlord’s fax documents, I located the Landlord’s documentary evidence.

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. As the primary issue to decide is whether or not the Tenant has a right of possession for the rental unit, I have dismissed the Tenants other claims with leave to reapply.

Issue to be Decided

- Is the Tenant entitled to an order of possession for the rental unit?

Background and Evidence

The Landlord and Tenant both testified that the tenancy is a fixed term tenancy. The tenancy began in March 2016, to continue until November 1, 2016. The tenancy was renewed as a fixed term tenancy from November 1, 2016, to continue until May 31, 2017. The tenancy was again renewed as a fixed term tenancy from June 1, 2017, to continue until May 30, 2018.

The current agreement requires rent in the amount of \$4,200.00 to be paid each month. The Tenant paid the Landlord a \$1,900.00 security deposit.

The Tenant is seeking an order of possession for the rental unit. The Tenant testified that the Landlord had an issue with him regarding the rental unit and she sent him a notice of termination letter using email on September 18, 2017.

The Tenant testified that that the Landlord's letter is not a proper notice to end tenancy and does not provide information on his rights.

The Tenant testified that the Landlord changed the locks of the rental unit on October 1, 2017. The Tenant testified that he had paid the rent for October 2017. After being locked out of the rental unit the Tenant made an application for Dispute Resolution requesting an order of possession and access to the rental unit.

The Tenant testified that he spends time out of town and has other roommates.

In response to the Tenant's testimony, the Landlord testified that she sent the Tenant a notice of termination letter and changed the locks after she learned that the Tenant was sub-letting the rental unit without permission. She testified that the Tenant was ending the tenancy of his sub tenants so he could rent the unit out to others for more rent. She testified that the Tenant was misrepresenting himself as an agent of the Landlord and was profiting from sub-letting.

The Landlord testified that she has rented the unit out to new occupants as of October 1, 2017.

The Landlord testified that the Tenant was not an occupant and another residence. The Landlord also testified that there was a pet present in the unit and the tenancy agreement specifies that no pets are allowed.

The Landlord testified that she was not aware that she was required to use a proper form to end the tenancy.

The Landlord submitted that she feels the Act does not apply to this tenancy because it was transitional housing. She testified that she initially rented to the Tenant to help him out.

In response, the Tenant testified that the other occupants were his roommates and he wrote up a roommate lease. He testified that his girlfriend lives in a nearby community and he often stays there.

Analysis

Section 7 of the Act provides that if a Landlord or Tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying Landlord or Tenant must compensate the other for damage or loss that results.

Section 31 of the Act provides that a Landlord must not change locks or other means that give access to residential property unless the Landlord provides each Tenant with new keys or other means that give access to the residential property.

Section 47 of the Act provides the situations where a Landlord may end a tenancy for cause. The section includes that a Landlord may end a tenancy by giving notice to end the tenancy if a Tenant has failed to comply with a material term, or purports to assign the tenancy agreement or sublet the rental unit without first obtaining the Landlord's written consent. A notice to end tenancy under this section must comply with the form and content of notice to end tenancy and a Tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the Tenant receives the notice.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Landlord breached the Act by ending the tenancy improperly. If the Landlord had a concern with a breach of a material term of the tenancy, or a concern regarding an illegal sublet, the Landlord is required to serve the Tenant a 1 Month Notice To End Tenancy For Cause. The Tenant would then have the option to either accept the 1 Month Notice and vacate the unit on the effective date or dispute the 1 month Notice by applying for a hearing.

The Landlord also breached section 31 of the Act by changing the locks of the rental unit and preventing access by the Tenant.

With respect to the Tenant's request for an order of possession of the rental unit, I have considered that the Landlord has entered into a new tenancy agreement with the current occupants as of October 1, 2017. I am mindful that the Tenant testified he paid the rent for October 2017; however I find it would be unreasonable in the circumstances to grant the Tenant an order of possession and create a situation where the new occupants would be homeless.

I grant the Tenant leave to reapply for compensation, for damage and loss he has suffered due to the Landlords breaches of the Act.

I do not accept the Landlord's submission that the Act does not apply because the tenancy was transitional. Transitional housing typically offers structure, supervision and support for short term tenancies. There is insufficient evidence from the Landlord to support her suggestion that the tenancy was transitional housing.

Section 72 of the Act authorizes me order repayment of an application fee by one party to a dispute resolution proceeding to another party. I order the Landlord to repay the Tenant the \$100.00 fee that the Tenant paid for the application.

Pursuant to section 65 of the Act, I order the Landlord to return to the Tenant any personal property of the Tenants that was seized or received by the Landlord.

Conclusion

The Landlord breached the Act by ending the tenancy improperly.

The Tenant's request for an order of possession of the rental unit is dismissed; however, he has leave to reapply for compensation from the Landlord.

The Tenant is granted a monetary order in the amount of \$100.00 for the cost of the filing fee.

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: November 10, 2017

Residential Tenancy Branch