



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM

Introduction

This matter dealt with an application by the Landlord for an Order of Possession.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the “hearing package”) by personal delivery on October 23, 2017. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord’s hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and the Tenants in attendance.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Is the Landlord entitled to an Order of Possession?

Background and Evidence

This tenancy started on September 1, 2013 as a verbal month to month tenancy. Rent was \$1,500.00 and then reduced to \$1,000.00 per month payable in advance of the 1st day of each month. A security and pet deposits were not required. No condition inspection report was completed at the start of the tenancy.

The Landlord said the Tenant his daughter S.B. and he signed a Mutual Agreement to End the Tenancy on September 6, 2017. The Landlord continued to say the female Tenant S.B. vacated the unit in September, 2017 but the male occupant R.B. has not vacated the rental unit. The Landlord said he is requesting an Order of Possession to remove the male occupant from the rental unit. Further the Landlord said no rent has been paid since September, 2017.

The male Tenant said he is a tenant not an occupant as he worked on the Landlord’s farm and rent payments were deducted from his pay cheque as part of his employment agreement. Further the male Tenant said there is a divorce proceeding between him and the female Tenant in Supreme Court so the Residential Tenancy Act does not have jurisdiction. Further the male Tenant said the Landlord would not accept any rent

payments from him therefore the rent has not been paid. The male Tenant continued to say that he did not sign the Mutual Agreement to End Tenancy therefore it is not binding on him. The male Tenant said he has the right to stay in the rental unit.

The female Tenant said she made the verbal rental agreement with her father the Landlord on September 1, 2013. The male Tenant R.B. was not part of the tenancy agreement or tenancy discussions. The female Tenant said R.B. is not a tenant but is an occupant the same as was the female Tenant's child. The female Tenant continued to say she was the only Tenant to the agreement and she agreed to and signed the Mutual Agreement to End Tenancy dated September 6, 2017. The female Tenant said she moved out of the rental unit to her family's home after signing the Mutual Agreement to End Tenancy in September, 2017. .

The Landlord said that the tenancy agreement was only with female Tenant and the male occupant started to contribute to the rent payment after the tenancy started when the male occupant was hire by the Landlord's farming operation. The Landlord thought this was a month or two after the tenancy started. The Landlord requested and Order of Possession to move the male occupant out of the rental unit.

The male Tenant insisted that he was part of the tenancy as a Tenant because he contributed to the rent payment each month from his pay cheque as agreed in his employment agreement. The male Tenant said he started to work for the Landlord in September, 2017 when they moved into the rental unit. Further the male Tenant said he does not dispute the Mutual Agreement to End Tenancy dated September 6, 2017 was signed by the female Tenant S.B. and the Landlord, but the male Tenant said it is not valid because he did not sign it.

The Landlord said even if the male occupant is consisted a tenant only one tenant has to sign a mutual agreement to make it binding.

The female Tenant S.B. said she agreed the Mutual Agreement to End Tenancy is binding as she was the only Tenant and she signing the Mutual Agreement to End Tenancy dated September 6, 2017.

Analysis

In this matter all parties agree that a Mutual Agreement to End Tenancy was signed on September 6, 2017. The Landlord and the female Tenant say the verbal tenancy was between the Landlord and the female Tenant S.B only. The male Tenant R.B. said because he worked for the Landlord and rent payments were deducted from his pay

cheque he is a tenant and therefore the Mutual Agreement to End Tenancy has to be signed by him as well to make it binding.

It should be noted that when there is no written tenancy agreement therefore a verbal tenancy agreement is assumed and is based on the testimony of the participants. It is agreed that the tenancy started September 1, 2013 and rent started at \$1,500.00 and then was reduced to \$1,000.00. As well it is agreed both S.B. and R.B. contributed to the rent payments. The Landlord and Tenant S.B. said the tenancy was only between them and R.B. was only an occupant who contributed to the rent but was not part of the tenancy agreement. R.B. says that because he contributed to the rent payments he is a tenant and because he did not sign the Mutual Agreement to End Tenancy that agreement is not valid.

As there is no written tenancy agreement to prove the terms of the tenancy I must make a decision on the testimony and submitted evidence given. Both the Landlord and the Tenant S.B. say the tenancy agreement was agreed to prior to R.B. working for the Landlord and both say that R.B. was not part of the tenancy agreement or tenancy discussions. R.B. says his claim to being a tenant is that he contributed to the rent payments from his wages. In many rental situations tenants have occupants that contribute to the rent payment but are not part of the tenancy agreement. On the testimony given and on the balance of probabilities, I accept the Landlord's and Tenant S.B.'s testimony that the tenancy agreement was only between the Landlord and Tenant S.B. therefore R.B. is considered an occupant to the tenancy and does not have the rights of a tenant. Consequently I find the Mutual Agreement to End Tenancy dated September 6, 2017 is valid and enforceable.

Section 44 1 (c) says a tenancy may be ended if a landlord and a tenant agree in writing that the tenancy has ended. Consequently, I find pursuant to s. 55 2 (d) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Occupant R.B.

Further as this is a tenancy between the Landlord and the female Tenant S.B. there is no conflict between this tenancy dispute and the divorce proceeding between S.B. and R.B. in Supreme Court. I find the Residential Tenancy Act has jurisdiction on the matter of this tenancy.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and Occupant has been issued to the Landlord. A copy of the Order must be served on the Tenant and Occupant: the Order of Possession may be enforced in the Supreme Court of British Columbia.

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 06, 2018

Residential Tenancy Branch