



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPM

Introduction:

Both parties attended and one respondent agreed she received personally the Application for Dispute Resolution dated April 4, 2018. The male respondent who is the tenant listed on the tenancy agreement did not attend. The landlord and the respondent who attended stated he had already complied with the Mutual Agreement to End Tenancy and had moved out. I find that the respondent was legally served with the documents according to section 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

a) An Order of Possession pursuant to Sections 44 (1) (c) and 55 as the respondent has breached a term of the Mutual Agreement to End Tenancy by not vacating as agreed.

Issue(s) to be Decided:

Is the landlord entitled to an Order of Possession?

Background and Evidence:

The respondent who attended and the landlord gave evidence that the male tenant who is listed on the tenancy agreement dated September 1, 2017 has vacated. Both parties who attended were given opportunity to be heard, to present evidence and to make submissions. The documentary evidence is that the male tenant who is the only one listed on the tenancy agreement commenced living in the premises September 1, 2017, a security deposit of \$400 was paid with a promise to pay an additional \$400 before September 30, 2017 and rent was listed as \$1800 a month. The respondent said the tenant had 6 to 10 room mates and the landlord said the respondent was paying rent since September or October 2017.

The landlord provided in evidence a Mutual Agreement to End Tenancy signed by the tenant, the respondent and another room mate on January 11, 2018. In it, they agreed the male tenant had given notice to end his tenancy and vacate the property by March

31, 2018. It stated "This effectively ends the tenancy of everyone there, which includes the two room mates, the respondent and an S.W. who is not named in this Application and did not participate in the hearing. S.W. agreed to vacate on January 14, 2018 and that she would receive a refund of \$500.

Both parties agreed there had been significant problems with the tenant's room mates. In evidence is a letter from him acknowledging this and the respondent said she had had things stolen and there were lots of altercations in the house. There are occupants staying in the house now and her witness is staying there to protect her. She said she actually has not lived there for much of the time because of the other room mates. She is living in a trailer and she knows there is lots of damage to the house.

However, she said the Mutual Agreement to End was not complete when she signed it. It only had the division of rents on it. She said her witness heard the discussion between her and the male landlord that she would take over the house. The landlord's brother who dealt with it and signed the Mutual Agreement said it is a type written agreement and was complete at the time of signing with only the hand written division of rents inserted at time of signing. He said he told the respondent that when the house was empty, the respondent might apply for a tenancy. She told him she would not commit to any amounts for rent until she inspected the house. She never made an application to rent it. The landlord said they would always require a written application and the respondent never submitted one.

In a recent letter to the landlord, the tenant said she suspected the landlord's motivation for ending the tenancy was to raise the rents. The landlord said they want their property back to see the condition it is in and the tenant had signed a Mutual Agreement to End his tenancy (he was having trouble with room mates) so there was no need to serve Notices to End Tenancy. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Residential Policy Guideline 13 clarifies tenancy situations. It states as follows:

A tenant is the person who has signed a tenancy agreement to rent residential premises. If there is no written agreement, the person who made an oral agreement to rent the premises and pay the rent is the tenant...

If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants...

Occupants

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

I find according to the Act and Policy Guideline, the respondent is not defined as a tenant. I find the weight of the evidence is that there was a tenancy agreement signed by a male tenant and he moved in various room mates of whom the respondent was one. I find even if she was defined as a co-tenant, which it seems she is not as she was not on the signed tenancy agreement, she was required to vacate when the male tenant signed the Mutual Agreement to End the tenancy. If she is defined as an occupant, I find she has no legal right to stay after the tenant gave his Notice and vacated.

I find insufficient evidence to support her contention that the landlord agreed she could take over the house. I find the testimony of the respondent and her witness inconsistent as she states she left and is living in a trailer and he states he is staying in the house to protect her. I find the landlord's evidence credible that they require an Application to Rent and the respondent never submitted one.

Conclusion:

I find the landlord is entitled to an Order of Possession effective two days from service. No filing fee was requested and none is awarded as the tenant responsible has already vacated.

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: April 26, 2018

Residential Tenancy Branch