



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, OPM, FFL

Introduction

This decision pertains to the Landlord's application for dispute resolution made May 11, 2018, under the *Residential Tenancy Act* (the "Act"). The Landlord seeks the following:

1. an order of possession in respect of the rental unit;
2. a monetary order for unpaid rent; and,
3. a monetary order for recovery of the filing fee.

The Landlord, the Landlord's representative, and the Tenants attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

No issues of service were raised by the parties.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

Issues

1. Is the Landlord entitled to an order of possession in respect of the rental unit?
2. Is the Landlord entitled to a monetary order for unpaid rent?
3. Is the Landlord entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The Tenants owned a home (the rental unit subject to this application). They sold the home to the Landlord in 2016. As part of the Contract of Purchase and Sale, the parties agreed to the Tenants renting the home until at least June 2018, or earlier if the Tenants gave the Landlord notice of their intention to move out earlier. The parties entered into, and signed, a Residential Tenancy Agreement, with monthly rent of \$2,700.00.

The Tenants had friends from out of province who needed a place to stay and get financially back on their feet. The home has a legal downstairs suite, in which the Tenants agreed to let their friends stay. The friends agreed to pay the Tenants \$800.00 per month, and the amount included all utilities and the internet.

At first, the Tenants thought that their friends would only stay a short while, but the friends stayed longer and longer. Given the increasingly quasi-permanent nature of their stay, the Tenants attempted on several occasions to have their friends sign a tenancy agreement. The friends refused.

The parties provided no oral or documentary evidence to show that the Landlord consented in writing to the Tenants subletting the downstairs suite to the friends.

On March 28, 2018, the Landlord and Tenants entered into, and signed, a Mutual Agreement to End a Tenancy, with the tenancy ending on April 30, 2018. The Tenants vacated the home on that date.

The friends remained in the home after the Tenants left, and have refused to enter into a tenancy agreement with the Landlord. Even after the Tenants left, the Tenants tried in vain to sway—to no avail—their friends to sign a tenancy agreement with the Landlord. The friends continue to live in the suite, having never signed any tenancy agreement with any party.

The Landlord seeks an order of possession, and the Tenants support the Landlord's application for an order of possession.

The parties submitted into evidence copies of the Contract of Purchase and Sale, the Mutual Agreement to End a Tenancy, the Residential Tenancy Agreement, and correspondence between the various parties and the friends.

Analysis

Claim for a Monetary Order for Unpaid Rent

The Landlord seeks a monetary order for unpaid rent. The Landlord did not present any documentary evidence (other than a Monetary Order Worksheet itemizing unpaid rent for May and June 2018), give testimony or make any submissions regarding this aspect of their claim. I also note that the tenancy mutually ended on April 30, 2018.

Given the insufficient evidence presented to me on the matter of a monetary order for unpaid rent, I find on a balance of probabilities that the Landlord has not met the onus of proving their claim regarding unpaid rent for May and June 2018. As such, I dismiss this aspect of the Landlord's claim without leave to reapply.

Order of Possession

During the hearing, the parties provided their positions in respect of whether the friends are "occupants" or "tenants." The Tenants testified that the friends moved into the suite and paid them "rent" pursuant to a verbal agreement. The Landlord did not provide consent in writing to the Tenants assignment of their tenancy agreement or to sublet the home (the "rental unit").

Section 34 (1) of the Act states that "Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit."

Applying the law to the facts of this case, I find that this was an illegal sublet between the Tenants and their friends because the Landlord never gave written consent to the Tenants to sublet. As such, there is no tenancy agreement between the friends and the Tenants. It follows from this, then, that the friends are not tenants but are occupants for the purposes of the Act. I now refer to the friends as "occupants" for the remainder of my decision.

Section 55 (2) (d) of the Act permits a landlord to request an order of possession of a rental unit when the landlord and tenant have agreed in writing that the tenancy is ended. Further, section 55 (3) empowers me to grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

Taking into consideration the submissions of the parties, and the Tenants' support of the Landlord's application for an order of possession issued under section 55 (2) (d) of

the Act, I hereby grant an order of possession.

This order must be served on the Tenants and on the occupants, and is effective two days after service. Given the circumstances of this case, I am including the names of the occupants in the order. This order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

Considering the position of the parties in this application and the Tenants' support of the Landlord in their application for an order of possession, I dismiss the Landlord's claim for a monetary order for recovery of the filing fee.

Conclusion

The Landlord is granted an order of possession. This order must be served on the Tenants and on the occupants, and is effective two days after service on the Tenants and occupants. This order may be filed in and enforced as an order of the Supreme Court of British Columbia.

I dismiss the Landlord's claim for a monetary order for unpaid rent and for 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 Act.

Dated: June 29, 2018

Residential Tenancy Branch