



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OPTIMUM REALTY INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes AAT CNC FFT LAT MNDCT OPT

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (“the Act”) for an order as follows:

- to cancel a 1 Month Notice to End Tenancy given for Cause (“1 Month Notice”) pursuant to section 47 of the *Act*;
- allow access to the unit or site for the tenant or the tenant's guest, pursuant to section 70 of the *Act*;
- to authorize a tenant to change the locks to the rental unit pursuant to section 70 of the *Act*;
- for a monetary award for money owed or compensation for loss under the *Act* pursuant to section 67;
- for an Order of Possession of the rental unit pursuant to section 54 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the landlord's agent, G.S. (the “landlord”) and the tenant S.V. (the “tenant”) attended the hearing. Tenant S.V. confirmed that he had full authority to speak on behalf of the tenant named in the application for dispute, explaining that he too was named on the tenancy agreement signed by the parties. All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions under oath.

The landlord confirmed receipt of the tenant's application for dispute and both parties confirmed receipt of each other's evidentiary packages. I find that both parties were duly served in accordance with the *Act*.

Issue(s) to be Decided

Can the tenant cancel the landlord's 1 Month Notice? Is the tenant entitled to an Order of Possession allowing access to the rental unit? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to a monetary award?

Can the tenant change the locks to the rental unit?

Should the landlord be ordered to allow the tenant or the tenant's guest's access to the unit?

Can the tenant recover the filing fee?

Background and Evidence

The landlord agreed that this tenancy began on November 1, 2017. Rent is \$2,650.00 per month and a security deposit of \$1,325.00 paid at the outset of the hearing, along with a \$300.00 key deposit continues to be held by the landlord.

The landlord and the tenant presented vastly different narratives and versions of events relating to the issues which led to the issuance of a 1 Month Notice to End Tenancy for Cause.

The tenant confirmed that he had received a 1 Month Notice to End Tenancy for Cause on May 31, 2018 after it was handed to him in person. The reason cited on the 1 Month Notice was listed as follows:

Tenant has allowed an unreasonable number of occupants in the unit/site

Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and put the landlord's property at significant risk

Tenant or a person on the property has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord

Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site

Tenant has assigned or sublet the rental unit without the landlord's written consent

The tenant provided significant testimony detailing the events which led to the landlord's issuance of the 1 Month Notice.

The tenant explained that he arrived back to the premises on June 3, 2018 and realized his key did not work. He said that he called the locksmith, the police, and the landlord to try and rectify the situation. The tenant alleged that while he was out of the rental unit on business, the landlord had placed a new tenant in the rental unit and changed the locks. The tenant said that since June 3, 2018 he has been forced to live in a hotel at significant expense, that the landlord has refused to grant him access to the rental unit and that he had no idea who was currently living in the rental unit. The tenant said that the persons who were occupying the rental unit told the police that they were tenants of the landlord, and in fact had a tenancy agreement with the landlord.

The tenant is seeking an Order of Possession allowing him and his guests access to the rental unit, an Order allowing him to change the locks, a monetary award of \$10,721.00 representing the expenses he has incurred since he was denied access to the rental unit, and a cancellation of the landlord's 1 Month Notice.

As part of his evidentiary package the tenant supplied numerous receipts for expenses he has purportedly incurred since being denied access to the rental unit. Among the expenses listed was a pair of shoes for \$1,450.40, receipts for dinners totalling \$3,632.99 and accommodation for \$2,455.00. When asked to explain these significant expenses, the tenant said that all of his belongings were in the rental unit, that he was "used to a certain standard of living", that these purchases were "strictly necessary", and he felt it would be unfair for him to suffer as a result of the landlord's negligence.

The landlord disputed all aspects of the tenant's submissions. The landlord said that it was in fact the tenant who had sublet the rental unit and allowed unknown persons to occupy it. The landlord said that the person to whom the tenant had rented the unit had in fact changed the locks. The landlord said that he did not know who currently occupied the unit and had no key to any lock currently associated with the rental unit. The landlord alleged that the tenant had placed the rental unit on AirBnb and ran the rental unit as a business. As part of his evidentiary package the landlord supplied several

letters from persons who acknowledged renting the unit on a short term basis via AirBnb from the tenant.

Analysis

The tenant has applied for an Order to cancel the landlord's Notice to End Tenancy, a monetary award, an Order giving the tenant possession of the rental unit and an Order permitting the tenant to change the locks and have access to the rental unit.

After having considered the testimony of both parties and having reviewed the numerous documents submitted by both parties, I find it highly unlikely that the series of events presented at the hearing by the tenant took place. I do not accept the tenant's version of events related to the tenancy and I find the evidence presented at the hearing by the landlord to be very persuasive. Specifically, I find the signed and dated letters from the occupants who rented the unit from the tenant to be influential in my decision to reject the tenant's version of events. The landlord produced numerous documents which supported his version of events and made his explanation credible. I find sufficient evidence was produced at the hearing that the tenant had allowed unknown persons to live in the rental unit without the landlord's consent, and that these people had changed the locks. The landlord currently has no way to access his own rental unit, has no knowledge of who is presently in the rental unit and has no control over his own rental unit. I find that all of these factors have placed the landlord's property at significant risk. I dismiss the tenant's application for an Order of Possession and to cancel the landlord's 1 Month Notice to End Tenancy. I find that the landlord is entitled to an Order of Possession.

As mentioned previously, the tenant has applied for a monetary award of \$10,721.00 related to expenses he allegedly incurred as a result of the landlord's actions in locking him out of the unit. I find that there is little merit to this application and that the tenant's application for compensation is more of an attempt to gain unjust enrichment from the landlord. I find that no actions on behalf of the landlord caused the tenant to suffer any loss and I find that many of the claims for which the tenant seeks reimbursement to be frivolous. In order for a person to receive a monetary award under section 67 of the *Act* the claimant must prove the existence of the damage/loss, and that this loss stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. I find that the tenant has failed to do this, and that the expenses for which the tenant seeks compensation were not incurred as a result of any action taken by the landlord. The tenant's application for a monetary award is dismissed.

I dismiss all aspects of the tenant's application for dispute. The landlord is therefore entitled to an Order of Possession effective two days after it has been served on the tenant.

As the tenant was unsuccessful in his application, he must bear the cost of his own filing fee.

Conclusion

The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order 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: July 16, 2018

Residential Tenancy Branch