



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RAINCITY HOUSING AND SUPPORT SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPT, AAT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession of the rental unit pursuant to section 54; and
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70;

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant was represented by an individual they appointed as an advocate who provided a signed letter authorizing him to act on the tenant's behalf in this matter. As the tenant did not attend this hearing, this individual acted in the role of the tenant's agent (the agent) representing the tenant's interests in this application.

As the landlord confirmed that the tenant's dispute resolution hearing package was handed to one of the landlord's representatives on July 6, 2018, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. The landlord's representatives gave undisputed sworn testimony that they handed the tenant a copy of the landlord's written evidence package on July 18, 2018, the same day that they sent the agent a copy of this same package by registered mail. The landlord provided the Canada Post Tracking Number to confirm the registered mailing. Although the agent said that he had not received the written evidence, I find this written evidence was served to the tenant in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the tenant entitled to an Order of Possession? Should any orders be issued requiring the tenant to be permitted access to the rental unit?

Background and Evidence

On May 30, 2018, another Arbitrator appointed pursuant to the *Act* heard the landlord's application to obtain an Order of Possession following the issuance of a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) to the tenant on February 28, 2018. In that hearing, the tenant did not attend, but the landlord did. In a decision of that same date, the Arbitrator allowed the landlord's application and issued a 2 Day Order of Possession to the landlord.

In that decision, the Arbitrator reported that this tenancy began on September 1, 2012. Since the tenant had not applied to cancel the landlord's 1 Month Notice within the time frame allowed under the *Act*, the Arbitrator found that this tenancy was to have ended on March 31, 2018, the effective date identified in the 1 Month Notice.

The tenant's current application was filed by the agent on July 6, 2018. In that application, the agent maintained the following:

(The landlord) was granted a 2 day 'Order of Possession May 30, 2018. This landlord grievously mishandled the execution of the ORDER @ the dispute address. (The tenant's) tenancy starts all over Details + Evidence to follow.

Neither the tenant nor the tenant's agent supplied any other written evidence in support of this application.

At the hearing, the agent said that the landlord did not obtain a writ of possession from the Supreme Court of B.C., nor did the landlord secure a court appointed bailiff to obtain possession of the tenant's rental unit and remove the tenant in accordance with the law. Since the landlord did not follow this process and has prevented the tenant from residing in the rental unit or gaining access to the rental premises, the agent maintained that the tenant was entitled to the issuance of a new Order of Possession allowing her tenancy to be reinstated and to have full access to the rental unit. The agent said that the tenant has mental health issues and is a very vulnerable person who has not been treated fairly by the landlord in evicting her from her long-term tenancy.

Landlord Representative MM (MM) testified that the tenant was handed the 2 Day Order of Possession and agreed to the landlord's proposal to relocate to the emergency

shelter the landlord operated below the rental housing the landlord operated and where the tenant had previously been living. MM said that the tenant's male friend also encouraged the tenant to move to the shelter downstairs, while the landlord tried to locate accommodations more suitable for the tenant's specific needs that had been identified during the latter course of her tenancy. MM said that the tenant appeared fully aware of what was happening and agreed to move to the landlord's emergency shelter without requiring the involvement of the Supreme Court of B.C. or a court appointed bailiff. MM testified that the tenant's move to the emergency shelter occurred on June 11, 2018. MM testified that the issuance of the 1 Month Notice occurred as a last resort and that the tenant's needs extend beyond those that can be supplied to tenants in the rental unit where she was previously residing. MM confirmed that the landlord continues to search for an appropriate housing match for the tenant while she remains in the emergency shelter.

The agent said that he did not become aware of this situation until the end of June 2018, at which time he contacted the Residential Tenancy Branch (the RTB) and sought information and assistance as to the tenant's options. The agent said that he realized that the decision issued on May 30, 2018 and 2 Day Order of Possession were final and binding, but asked for the landlord to apply mercy to the tenant in this difficult situation.

The landlord provided sworn testimony and written evidence that the tenant's possessions remain in the rental unit, which has been sealed until the outcome of this hearing was known.

Analysis

I first note that I have no authority to alter, revise or in any way modify the final and binding May 30, 2018 decision and Order of Possession issued by the other Arbitrator who considered this matter on that date.

There is also undisputed evidence before me that the agent only became aware of this situation weeks after the tenant agreed to leave the rental unit on June 11, 2018, after having received the 2 Day Order of Possession from the landlord. The application to obtain an Order of Possession for the tenant was not submitted until July 6, 2018, three and a half weeks after the tenant agreed to abide by the terms of the 2 Day Order of Possession and move into the landlord's emergency shelter.

While section 54 of the *Act* does allow for the issuance of an Order of Possession to the tenant, the agent has provided insufficient evidence that any such order is warranted in this case. Orders of Possession issued to tenants only require a Writ of Possession

from the Supreme Court of B.C. and subsequent enforcement of that Writ and the RTB's Order of Possession by a court appointed bailiff in the event that the tenant does not comply with the Order of Possession issued by the RTB. In this case, I am fully satisfied that the tenant agreed to comply with the Order of Possession and did not require the involvement of either the Supreme Court of B.C. or a court appointed bailiff. Such measures are only required if tenants do not agree to comply with the Order of Possession issued by the RTB. Many tenancies end after Orders of Possession have been issued without a landlord having to obtain a court appointed bailiff to take possession of the rental unit.

Although it has no bearing on my decision, I am also satisfied that the landlord has taken measures to assist the tenant in both her temporary housing needs and to secure housing more suitable for her in the future.

Conclusion

I dismiss this application without leave to reapply.

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: August 01, 2018

Residential Tenancy Branch