



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) and an Amendment to an Application for Dispute Resolution (the “Amendment”) that were filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking an Order of Possession based on a mutual agreement to end tenancy.

The hearing was convened by telephone conference call and was attended by the Landlord and the Tenant, both of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. In the hearing the Tenant confirmed receipt of the Application, the Amendment, the Notice of Hearing and the documentary evidence before me from the Landlord.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses confirmed in the hearing.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the month-to-month tenancy began on April 1, 2018, and that rent in the amount of \$3,000.00 is due on the first day of each month. The parties agreed that the Tenant rented the entire property under his tenancy agreement and that the Tenant had permission to obtain

roommates or to sublet portions of the home, should he choose to do so, in order to help pay his own rent. As a result, the Tenant testified that he rented out a bachelor suite in the basement and a three bedroom unit on the top floor to other occupants.

The parties agreed that on August 1, 2018, they signed a mutual agreement to end the tenancy effective September 1, 2018, a copy of which was provided by the Landlord in the documentary evidence before me for consideration. The parties also agreed that the Tenant and the occupants upstairs vacated the rental unit in compliance with the mutual agreement to end the tenancy and that the occupant of the bachelor suite in the basement has yet to move out. Further to this, both parties stated that the occupant of the bachelor suite has not paid any rent for August, September, or October of 2018.

As a result, the Landlord sought an Order of Possession for the rental unit.

Analysis

Section 44(1)(c) of the *Act* states that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. Based on the documentary evidence and the testimony before me for consideration, I am satisfied that the Tenant rented the entire property from the Landlord under his tenancy agreement and that he and the Landlord mutually agreed to end his tenancy effective September 1, 2018. Although the Landlord granted permission for the Tenant to have roommates or to sublet portions of the property to assist him in paying his own rent, it is clear to me from the testimony provided by the parties in the hearing that the Tenant is not an agent for the Landlord or another person who, *on behalf of the Landlord*, permits occupation of the rental unit under a tenancy agreement. As a result, I find that there is no contractual obligation between the Landlord and the occupant of the bachelor suite in the basement of the rental unit and that the Tenant therefore ended the tenancy for all occupants of the property covered by his tenancy agreement when he signed the mutual agreement to end the tenancy.

Based on the above, I find that the tenancy ended on September 1, 2018, the date agreed upon in the mutual agreement to end tenancy, and that the occupant of the bachelor suite in the basement of the rental unit is overholding. Pursuant to section 55(2)(d) of the *Act*, the Landlord is therefore entitled to an Order of Possession effective **two days** after service on the Tenant and the remaining occupant(s) of the rental unit.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant and the remaining occupant(s) of the rental unit. The Landlord is provided with this Order in the above terms which must be served on the Tenant and the remaining occupant(s) of the rental unit as soon as possible. Should the Tenant or the remaining occupant(s) fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: October 18, 2018

Residential Tenancy Branch