



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes

Tenant: CNC, CNR, OLC
Landlord: OPM, MNR, OLC

Introduction

This hearing was convened in response to cross applications filed by the parties.

The landlord and the named respondent tenant attended the conference call hearing and each participated with their submissions and testimony. Each acknowledged receiving the application and evidence of the other as submitted to the proceeding. At the outset of the hearing the parties were afforded opportunity to mutually resolve their dispute to no avail.

Preliminary matters

At the outset of the hearing the tenant orally confirmed they were disputing a 1 Month Notice to End Tenancy for Cause and a 10 Day Notice to End tenancy for unpaid rent and sought the landlord comply with the Act. The landlord acknowledged they were not relying on either of the referenced Notices to End as the tenant satisfied the unpaid rent identified in the 10 Day Notice to End within the 5 days permitted to do so, and further acknowledged they had not issued a valid Notice to End for Cause as it was not in the approved form. The landlord orally confirmed they were amending their original application seeking solely to end the tenancy and recover the filing fee. Therefore, I preliminarily found the referenced 2 Notices to End tenancy in this matter moot and effectively **cancelled**. The hearing proceeded on the merits of the remaining relevant items of the parties in dispute.

Issue(s) to be decided

Should the landlord be ordered to comply with the Act?
Is the landlord entitled to an Order of Possession?
Is the landlord entitled to recover their filing fee?

Background and evidence

I have received an abundance of evidence in this matter. However the relevant evidence in this matter is as follows. This tenancy began August 01, 2018. The payable monthly rent is \$1290.00. From both parties I have benefit of a copy of the signed tenancy agreement indicating 2 named persons occupying the rental unit as co-tenants of the tenancy, EM and JT. The tenancy agreement states that it is “for 1 year starting from August 1, 2018 to May 1, 2019”. The landlord submitted a copy of a Mutual Agreement to End a Tenancy document signed by one of the tenants, JT, and the landlord on August 19, 2018 indicating the parties’ agreement that the tenancy would legally end October 01, 2018. The landlord also provided a Tenant’s Notice to End from JT dated August 19, 2018 effective October 01, 2018. The landlord testified that JT vacated the rental unit pursuant the Mutual Agreement and their Tenant’s Notice on October 01, 2018. Tenant EM testified that JT vacated October 01, 2018. The respondent tenant (EM) testified that neither the mutual agreement nor the tenant’s notice should be regarded as valid as it was absent their own particulars and consent and therefore they should be permitted to remain in the rental unit.

Tenant EM advanced that they and the other tenant shared the rental unit however separately paid half the rent and separately were responsible for half the utilities. EM argued they effectively operated as if they shared the rental unit under separate tenancy agreements. The landlord argued the 2 tenants were co-tenants under a single tenancy agreement without intention to create separate tenancies with each tenant. EM testified they satisfied half of the current payable rent for which the landlord provided a receipt stating the rent amount was accepted for “use and occupancy only”.

Analysis

The full text of the Act, Regulation, and Residential Tenancy Policy Guidelines can be accessed via the RTB website: www.gov.bc.ca/landlordtenant .

I find that *Residential Tenancy Policy* **Guideline 13. Rights and Responsibilities of Co-tenants** aptly explains the circumstances in this matter. For ease the relevant portion of the guideline is reproduced as follows. **(emphasis added)**

This Guideline clarifies the rights and responsibilities relating to multiple tenants renting premises under one tenancy agreement.

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. Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

*Where co-tenants have entered into a fixed term lease agreement, and one tenant moves out before the end of the term, that tenant remains responsible for the lease until the end of the term. **If the landlord and tenant sign a written agreement to end the lease agreement**, or if a new tenant moves in and a new tenancy agreement is signed, **the first lease agreement is no longer in effect.***

*Where co-tenants have entered into a periodic tenancy, and one tenant moves out, that tenant may be held responsible for any debt or damages relating to the tenancy until the tenancy agreement has been legally ended. **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.** If any of the tenants remain in the premises and continue to pay rent after the date the notice took effect, the parties may be found to have entered into a new tenancy agreement. The tenant who moved out is not responsible for carrying out this new agreement.*

I find the evidence does not support that the tenants entered into separate tenancy agreements each for half of the living accommodations in this matter. Effectively, I find that the 2 tenants and the landlord entered into a single tenancy agreement for one tenancy comprised of 2 co-tenants. I find that the tenancy agreement is ambiguous in respect to whether the tenancy is or is not a fixed term and whether it is or is not for 1 year as the dates reflect 9 months. I find these ambiguities in the least render the agreement to be on a month to month basis. I find that co-tenant JT provided the landlord with, both, a legal Tenant's Notice to end the tenancy for both tenants, as well as entered into a Mutual Agreement to End the sole tenancy in this matter. But regardless, I find that as a result of all the above the landlord is entitled to an **Order of Possession** of the rental unit effective October 01, 2018.

As that time has elapsed the landlord is given an Order effective 2 days from the day it is served. As the landlord was in part successful in their application they are entitled to recover their filing fee of \$100.00.

I find no remaining basis to order the landlord to comply with the Act. As a result the tenant's application is **dismissed** in its entirety, without leave to reapply.

Conclusion

The tenant's application is **dismissed**. The landlord's application is, in relevant part, granted.

I Order that the landlord may withhold \$100.00 from the tenant's security deposit in satisfaction of the filing fee.

I grant an Order of Possession to the landlord **effective 2 days from the day** it is served on the tenant. The tenant must be served with this Order of Possession. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding.

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 26, 2018

Residential Tenancy Branch