



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to enforce a Mutual Agreement to End a Tenancy (the "Mutual Agreement").

The Landlord and the Tenant, C.A.'s, roommate, J.W., (the "Roommate") appeared at the teleconference hearing and gave affirmed testimony. According to the Roommate, C.A. advised him of the hearing and urged him to attend on his own behalf.

As will become apparent in this decision, the Roommate could fall under the definition of "tenant" under section 1 of the *Act*, as the definition "includes . . . (b) when the context requires, a former or prospective tenant." As such, for this reason and others that will become apparent in the decision, I find it is appropriate to allow him to participate as a Party to this dispute resolution process.

I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing, the Roommate and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party; I reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither Party raised any concerns regarding the service of documentary evidence. The Landlord provided evidence that she sent the notice of hearing package and documentary evidence to the Respondent, C.A. by registered mail. The Landlord submitted the registered mail tracking information to the Residential Tenancy Branch ("RTB") 10 days prior to the hearing; however, pursuant to the RTB Rule of Procedure 3.17, which allows me to consider evidence not provided to the other party within 14 days of the hearing, I am satisfied that there was no prejudice to the Respondents by my considering the registered mail tracking evidence. I searched the tracking number

on the Canada Post tracking website, which indicated that the Landlord sent the package to C.A. on December 31, 2018, that it was delivered on January 6, 2019, and that a signature is available. I note this was served 16 days prior to the hearing on January 22, 2019. I am satisfied that the Application was served on the Tenant pursuant to the *Act*.

Preliminary and Procedural Matter

At the outset of the hearing, the Landlord provided her email address and the Roommate provided his mailing address for delivery of this decision. The Parties confirmed their understanding that the decision would be emailed to the Landlord and mailed to the Respondents.

Background and Evidence

This matter involves the tenancy agreement(s) of the rental unit and its tenants, roommates, and a mutual agreement to end the tenancy of the Respondent, C.A. The Landlord submitted a document stating the purpose of the hearing for her:

Purpose of Hearing

I am seeking an Order for Vacant Possession of [rental unit address].

The Respondent [C.A.] and myself [L.M.] signed a Mutual Agreement to End Tenancy (See Document, Pages 1 & 2) while [C.A.] was in the hospital. I have no knowledge of [C.A.] having been on the property since her hospitalization in late October [2018].

[C.A.'s] roommate [J.W.] was given a letter (see document, Occupants of Suite #3) informing him of [C.A.'s] decision to end [the] tenancy. [J.W.] was given a date to vacate and hand over possession of the suite. He was not offered tenancy at this time as he had made no attempt to pay his portion of the rent for the duration of his occupation of [rental unit address]. [J.W.] also has made no attempt to vacate the premises (note, I have heard a second hand rumor that [J.W.] has claimed he feels he is entitled to squatter's rights). The power to Suite #3 has been cut off since late November and [J.W.] has since ran an extension cord into the suite from an outlet in the common hallway of the building.

In the hearing, the Landlord said that the issues with the rental unit tenancies began about eight months prior to the hearing. She said the tenant of the rental unit at that time, T.N., advised the Landlord that the Roommate, J.W., would be staying with him for a while, but that T.N. would be moving out at the end of September 2018. The Landlord said she agreed that J.W. could stay as a guest of T.N. for four months and then take over the tenancy when T.N. moved out; however, the Landlord said J.W. would have to apply as a tenant and would not have the same rent as T.N., but that J.W. could take over the tenancy when T.N. vacated the rental unit, ending his tenancy.

The Landlord said that on August 31, 2018, the Landlord wrote a letter to, J.W., saying that his four month term as a guest of T.N. would be over at the end of September 2018, further to their May 2018 discussion in this regard. The Landlord submitted a copy of this letter into evidence before me. In this letter she said:

[J.W.]

This letter is to layout expectations and process if you are to take over possession of [rental unit address].

The 4 month term for you to reside here as a guest of [T.N.] will be over at the end of September 2018, as per our discussion in May 2018.

If you should decide to remain as a tenant, I will need a \$400 security deposit, monthly rent will be \$800 that will be due on October 1st, 2018 and on the first day of the month for every month thereafter. We will also need to sign a tenancy agreement.

Please let me know by September 20th, 2018 of your decision to take possession of suite #3, or if you will be vacating.

Thank you,
[L.M.]

In the hearing, J.W. said he did not recall this letter and he said the Landlord did not approach him about it. In the hearing, the Landlord said that J.W. never responded to this letter.

Further, the Landlord said that J.W. had a friend, C.A., staying with him at the rental unit and that the Landlord was interested in starting a tenancy agreement for the rental unit with C.A.

In the hearing, J.W. acknowledged that he was on financial assistance, and as such, could not pay rent. He said he does work around the building to contribute, although the Landlord said there was no arrangement for J.W. to do work around the property, instead of paying rent. J.W. said in the hearing that C.A. gave him the money to pay the rent in November 2018 and that he gave this money to the Landlord. The Landlord said that it was not the full amount of the rent that was due and that she knew it came from C.A. and not J.W.

In the hearing, J.W. said that he gave the Landlord a "shelter form" for her to sign, which would assist him in being able to pay rent, but that she did not sign the form. The Landlord said that the Roommate went by a different name on the shelter form and collected money for the suite for September and October; however, she said that he did not pay any rent for these months. The Roommate denied that he received any funds for these months; he said that only one person can receive rent money for one apartment and that C.A. received it for September and October for the rental unit.

In the hearing, the Landlord said that on October 5, 2018, she wrote to C.A. about a tenancy agreement and granting her permission to allow J.W. to reside with her as a roommate. "As your roommate [J.W.'s] use and occupancy is dependent on the status of your tenancy. [J.W.] will be your responsibility and is expected to adhere to all policies and guidelines of tenancy in this building."

On October 7, 2018, the Landlord and C.A. signed a fixed term tenancy agreement for six months, with the possibility of a month-to-month tenancy thereafter. On the first page of this tenancy agreement, J.W. is identified as a "roommate" to the Tenant, C.A., and J.W. was not a signatory to the tenancy agreement.

In the hearing, the Landlord said that in late October 2018, C.A. was hospitalized and called the Landlord to advise that she would not be able to meet the requirements of the tenancy agreement.

In a document the Landlord submitted dated November 5, 2018, she said she talked to C.A. in the hospital on the telephone. The Landlord said that C.A. asked to be released from the tenancy agreement, and that "due to the circumstances between her and [J.W.], along with her health, I have agreed to end her tenancy effective immediately

and will refund the \$460 that she gave me in rent for November 2018.”

The Landlord submitted a handwritten document regarding the mutual agreement to end tenancy that she signed with C.A. In this handwritten document she said:

The date of November 5th was the day [C.A.] and I agreed to terminate the tenancy agreement. This was done over the phone while [C.A.] was in hospital.

The agreement was terminated under special circumstances due to [C.A.’s] health concerns. She will be unable to meet the requirements of the agreement.

[M., social worker, and telephone number] was present with [C.A.] during this phone conversation.

A copy of this agreement was emailed to [M., social worker] to give to [C.A.]. A meeting will be scheduled at a later date when [C.A.] is stable.

Mailing address
[L.M.]

November 22nd

[C.A. and I were able to meet to sign this agreement (we met at [M. social worker’s] office). A duplicate copy of this agreement was left with [C.A.]

The Landlord submitted a document dated November 5, 2018, entitled “Mutual Agreement to End a Tenancy” (the “Mutual Agreement”), which purported to end the tenancy in the rental unit as of November 30, 2018. J.W. was identified on the Mutual Agreement as a roommate, and it was signed by C.A. and the Landlord.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession based on a Mutual Agreement to End Tenancy?

Analysis

Based on the above, and on a balance of probabilities, I find the following.

First, Policy Guideline 13 states:

Policy Guideline 13: Rights and Responsibilities of Co-Tenants

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

. . .

Occupants

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

J.W. was offered the opportunity to become a tenant under a tenancy agreement with the Landlord at the end of August 2018; however, he did not pursue this option, although he continued to live in the rental unit without paying rent. Given the undisputed evidence that the Landlord allowed J.W. to live in the rental unit at the request of his friends, T.N. and C.A. without paying rent, I find that J.W. is an “occupant” as set out in Policy Guideline 13. As such, he does not have any rights or obligations under a tenancy agreement and his status as an occupant is dependent on the status of the tenancy of his friend(s) the tenants.

Based on the evidence before me, I find that C.A. was the last tenant of the rental unit and that she ended the tenancy by mutual agreement with the Landlord on November 30, 2018.

Based on the legislation, policy guidelines and the evidence before me, overall, I find that the Roommate is an “Occupant”, as set out in Residential Tenancy Branch (“RTB”) Policy Guideline 13. As such, he has no rights or obligations under this tenancy agreement. J.W. must abide by the Tenant, C.A.’s mutual agreement to end the tenancy.

Section 55(2) of the Act applies and states:

Order of possession for the landlord

55 (2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

. . .

(d) the landlord and tenant have agreed in writing that the tenancy is ended.

I have reviewed the Mutual Agreement and I find that it complies with section 52 of the *Act*; although it is not a “Notice to end tenancy”, it was signed by the Landlord and Tenant, has the address of the rental unit, and an effective date of the end of the tenancy. Based on everything before me, overall, I grant the Landlord an order of possession pursuant to the Mutual Agreement, effective **two days** after service on the Tenant, as the effective vacancy date of November 30, 2018, has already passed.

Conclusion

The Landlord's Application to enforce a Mutual Agreement to End Tenancy is successful. The Landlord has been granted an order of possession effective two days after service on the Tenant.

This order must be served on the Tenant and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the Parties, unless otherwise provided under the *Act*, and 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: February 7, 2019

Residential Tenancy Branch