



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPM

Introduction

This hearing was convened in response to an application and amended application by the Landlord for an order of possession pursuant to section 55 of the *Residential Tenancy Act* (the “Act”).

The Landlord and Respondent JMP were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

Respondent JMP provided a different spelling for its second name and the Parties agreed that the application should be amended to reflect this spelling. Given this agreement I amend the application to set out the Respondent JMP second name as provided by this Respondent.

Issue(s) to be Decided

Is Respondent JMP a tenant with rights and obligations under the Act?

Is the Landlord entitled to an order of possession?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on March 1, 2019. Rent of \$950.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$475.00 as a security deposit. On April 2, 2019 the

Landlord served the Respondents with a 10 day notice to end tenancy for unpaid rent (the "Notice") by posting the Notice on the door.

Respondent JMP states that it did not sign the tenancy agreement although the agreement named Respondent JMP as a tenant. Respondent JMP states that it intended to be a tenant but that the agreement was signed when the Respondent JMP was not present. The Landlord states that both persons named as tenants were expected to sign the agreement and that the agreement was given to tenant PJ to take to the Respondent JMP for signature but that tenant PJ informed the Landlord that the Respondent JMP did not need to sign the agreement as tenant PJ would take sole responsibility for the tenancy. The Respondent JMP's Advocate argues that the Respondent JMP is properly a tenant under the tenancy agreement as the Landlord accepted both tenant PJ and the Respondent JMP as tenants as shown by the naming of both persons on the tenancy agreement and the application for dispute resolution and as shown by the Landlord having served both Respondents with the hearing materials.

The Landlord states that on March 12, 2019 the tenant PJ was arrested and has a restraining order not to contact the Respondent JMP. The Landlord states that tenant PJ apologized to the Landlord and wanted to end the tenancy so on March 12, 2019 tenant PJ and the Landlord entered into a mutual agreement to end the tenancy for the same day. The Landlord states that no tenancy agreement was then sought with the Respondent JMP as the Landlord was not willing for this to happen.

The Respondent JMP states that tenant PJ did not sign the mutual agreement and that the signature for tenant PJ was forged. The Respondent JMP points to the Landlord's evidence including the tenancy agreement to show that the signature on the mutual agreement does not match the other examples of tenant PJ's signature. The Respondent JMP states that tenant PJ could not attend the hearing due to being away at work. The Respondent JMP Advocate argues that the mutual agreement is unconscionable or should be seen as forged as the tenancy had only just started, that

full rent had been paid for March 2019 and it would be unlikely that anyone would sign an agreement to end a tenancy before the end of a month where full rent had been paid for that month.

The Landlord states that no rent was paid on April 1, 2019. The Landlord states that tenant PJ was given one of the Landlord's blank cheques in order to pay the rent.

The Respondent JMP states that the Landlord came to the unit on April 1, 2019 and spoke to tenant PJ outside the unit. Respondent JMP states that the Landlord refused to take the rent from tenant PJ and that the Landlord did not respond to texts about the payment of the rent. The Respondent JMP states that the tenancy agreement does not set out the Landlord's name and address for service. The Respondent JMP states that they had no address or contact information for the Landlord other than a phone number and that the Notice only set out the dispute address for the Landlord. The Respondent JMP states that they had no way to pay the Landlord other than in person, that the Landlord was refusing to accept the rent and that the Landlord was avoiding them. The Respondent JMP provides copies of texts dated April 10 and 12, 2019 that are in reference to the rent and a letter in relation to their complaints. The Respondent JMP states that the Landlord refused to collect the letter and the rent for April 2019.

The Landlord states that while he was at the unit on April 1, 2019 the tenant PJ only told him that the rent would be paid the next day. The Landlord states that no attempts were made to pay and that when tenant PJ called the Landlord on April 2, 2019 tenant PJ said the Landlord cheated and that tenant PJ only raised problems. The Landlord states that he had a difficult time having a conversation with the Respondents as they only made accusations. The Landlord states that its address for service was not put on the tenancy agreement out of caution as the Landlord did not want the Respondents to have its address.

Analysis

Section 6(1) of the Act provides that the rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement. Policy guideline #13 provides that a tenant is the person who has signed a tenancy agreement to rent residential premises. Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the occupant as a tenant. Although from the evidence it can be accepted that the original intention was to have both the Respondent JMP and tenant PJ sign the tenancy agreement, given that only tenant PJ signed the written agreement and considering the Landlord's undisputed evidence that tenant PJ wanted to be the sole tenant named in the agreement I find on a balance of probabilities that the Respondent JMP is not a tenant under the tenancy agreement with any rights or responsibilities.

Section 44(1)(c) of the Act provides that a tenancy ends where, inter alia, the landlord and tenant agree in writing to end the tenancy. Section 55(2)(d) of the Act provides that a landlord may request an order of possession of a rental unit where the landlord and tenant have agreed in writing that the tenancy is ended by making an application for dispute resolution. Although the Respondent JMP argues that the mutual agreement to end the tenancy is fraudulent, I cannot determine that the tenant PJ's signature was forged as there only appears to be minor, if any, variants in the signatures. Further the Landlord gives direct evidence of the signing of the mutual agreement and tenant PJ did not attend the hearing to give direct evidence and did not provide a written statement or affidavit contradicting the Landlord's evidence of the mutual agreement. As such I find on a balance of probabilities that the Landlord has substantiated that tenant PJ did sign a mutual agreement to end the tenancy. As the Landlord made an application to claim an order of possession on this basis I find that the Landlord is entitled to an order of possession. As the Respondent JMP has no rights under the tenancy agreement it has no rights to continue the tenancy without its own tenancy agreement and must move out

of the unit. For the same reason I find that Respondent JMP also has no obligations to pay any rent under the tenancy agreement.

Section 13(2)(e) of the Act provides that a tenancy agreement must set out the address for service and telephone number of the landlord or the landlord's agent. Section 52(e) of the Act provides that in order to be effective, a notice to end a tenancy must be in the approved form. Although the tenancy is ending on the basis of the mutual agreement, I note that the Notice does not provide the Landlord's address for service as required on the approved form. For this reason and given the undisputed evidence that the tenancy agreement does not contain the Landlord's address for service I consider that the Notice is not valid. I caution the Landlord in this regard for future tenancy agreements and notices to end tenancy.

Conclusion

I grant an Order of Possession to the Landlord. 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 made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 1, 2019

Residential Tenancy Branch