



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPN, FF

Introduction

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

- an order of possession pursuant to section 55;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (the landlord) attended the hearing via conference call and provided testimony. The tenant, H.F. attended via conference call and provided testimony and made submissions with the assistance of his advocate. Both parties confirmed that

The landlord seeks an order of possession as a result of one of the two named tenants providing notice to end tenancy. The landlord clarified that the named tenant, H.F. has argued that notice was not given to end the tenancy, but by the other named tenant, P.K.

Issue(s) to be Decided

Is the landlord entitled to an order of possession and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on December 1, 2017 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated December 1, 2017. The monthly rent is \$985.00 payable on the 1st day of each month. It also notes a security deposit paid of \$450.00 paid on August 12, 2013. The tenancy agreement provides for both of the named tenants, H.A.F. and P.L.K. as co-tenants.

The landlord seeks an order of possession as a result of a notice to end tenancy given by the named tenant, P.K. The landlord stated that upon receiving the notice to end tenancy, the landlord began advertising the rental unit and scheduling showings to view the rental unit.

The named tenant H.F. disputes the landlord's request stating that the named tenant, P.K. is not the primary tenant, but that he the tenant, H.F. is. H.F. argues that P.K. is not a co-tenant and does not have any right or authority to end the tenancy. H.F. argues that the "Addendum to the Tenancy Agreement" invalidates the original signed tenancy agreement. H.F. argues that the responsibilities of the two named tenants are not equal as H.F. collects the rent from P.K. to pay the landlord each month. H.F. has made allegations that the landlord has offered to rent the unit at a higher rent back to H.F. H.F. has argued repeatedly that the landlord did not complete a condition inspection report for the move-in, but has not provided any details of how this is relevant to the landlord's request.

The landlord disputes the tenant's claims stating that at no time has the landlord offered the tenant a new tenancy with a higher rent.

In support of these claims, the landlord has provided:

A copy of the signed tenancy agreement dated December 1, 2017

A copy of the tenant, P.K.'s written notice to end tenancy received by the landlord on May 25, 2019 for June 30, 2019

A copy advertisement dated July 3, 2019

A copy of a receipt dated June 24, 2019 for "Use and Occupancy only"

A copy of a receipt dated July 2, 2019 for "Use and Occupancy only"

Analysis

In this case, I find in reviewing the signed tenancy agreement provided by the landlord that a single agreement tenancy was entered into by both named tenants. Both parties

are named as tenants and both parties signed the agreement dated December 1, 2017. I find that this makes them co-tenants.

Residential Tenancy Branch Policy Guideline #13, Rights and Responsibilities of Co-Tenants states in part,

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.

The landlord has provided undisputed evidence that the named tenant, P.K. provided written notice ending the tenancy on May 25, 2019 for June 30, 2019. The landlord has also provided rent receipts issued to the tenant, H.F. for rent paid for July and August 2019 for "use and occupancy only". As such, I find that no new tenancy was entered into.

On this basis, I find that the tenant, P.K. did give notice to end tenancy and the landlord has advertised the unit to be re-rented. The landlord has been successful in establishing a claim for an order of possession to be effective 2 days after upon the tenant being served.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$100.00.

These orders must be served upon the tenants. Should the tenants fail to comply with the orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as orders of those courts.

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 06, 2019

Residential Tenancy Branch