



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KANAGAN VALLEY RENTALS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPT

Introduction

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

- an Order of Possession of the rental unit pursuant to section 54.

SS appeared for both tenants in this hearing. SK ("landlord") appeared as agent for the landlord in this hearing. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenants' application for dispute resolution ('application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenants' application and evidence.

Preliminary Issue – Landlord's Evidence

The tenant SS testified in the hearing that he did not receive the landlord's evidence package. The landlord's agent testified that the tenants were served on July 18, 2019 by way of posting the evidence package on the door, as well as by way of registered mail to the rental address. The tenant SS testified that since he was locked out on July 11, 2019, and no longer

had access to the residence, he did not receive these evidentiary materials. The landlord's agent testified that she had no other means of serving the tenants, as she was unable to obtain a substituted service order.

Rule 3.15 of the RTB's Rules of Procedure establishes that "the respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing"

The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first

In accordance with rule 3.15 and the definition of days, the last day for the landlord to file and serve evidence for this hearing was on July 31, 2019. The landlord's evidentiary materials were not received by the RTB until August 2, 2019.

A party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case. In this case, although the landlord's agent testified that she had served the tenants with the landlord's evidence package, the tenants deny that they were ever served. As the tenants were locked out as of July 11, 2019 from the residential address the landlord used for service, and in the absence of sufficient evidence to support that the evidence was served in accordance with section 88 of the *Act*, the landlord's evidence package will be excluded for the purposes of this hearing.

Issue(s) to be Decided

Are the tenants entitled to an Order of Possession?

Background and Evidence

Both parties confirmed that this fixed-term tenancy began on July 1, 2019, with monthly rent set at \$1,850.00. The tenants paid a security deposit in the amount of \$925.00, which the landlord still holds. It is undisputed that the tenants were locked out of the residence by the landlord as of July 11, 2019, and have not had access to the rental unit since that date. The landlord's agent confirmed in the hearing that the unit is still vacant, and has not been re-rented to new tenants. The landlord's agent testified that the tenant has not paid any rent for this tenancy.

Both parties confirmed that a future hearing is scheduled for September 3, 2019 to deal with a 10 Day Notice issued by the landlord for unpaid rent. The tenant testified that he was locked out on July 11, 2019 after he had filed his application to dispute the 10 Day Notice.

The landlord's agent testified in this hearing that the landlord had locked the tenants out upon discovering disturbing information about the tenants. The landlord feels that the tenants had forfeited their rights to the tenancy agreement as the tenants were not truthful with the information that was provided to the landlord in order to be approved for this tenancy, such as providing false references. The landlord felt that they had no choice as they had to protect the owner's investment.

The landlord's agent testified that upon further investigation and after communicating with other landlords, they had discovered that the tenants had a history of issues with previous landlords which involve police files, previous RTB arbitration, and the courts. The landlord's agent testified that the damage the tenants have caused include considerable damage and monetary loss for these landlords due to the damage caused by the tenants, as well as theft of the landlords' belongings.

The tenant responded in the hearing that these allegations were unfounded and not based on fact. The tenant feels that he is a victim of a one-sided smear campaign. He testified that he had one warrant that was related to a driving offence. The tenant is requesting an Order of Possession so the tenancy may be restored, and so they may gain access to their personal belongings.

Analysis

I find it undisputed that both parties had agreed to enter into a fixed-term tenancy agreement that began on July 1, 2019. Both parties, under the *Act*, are therefore bound by the rights and obligations required by this tenancy agreement and *Act*.

Section 44 of the *Act* states how a tenancy may be ended:

How a tenancy ends

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [*tenant's notice*];

(i.1) section 45.1 [*tenant's notice: family violence or long-term care*];

(ii) section 46 [*landlord's notice: non-payment of rent*];

(iii) section 47 [*landlord's notice: cause*];

(iv) section 48 [*landlord's notice: end of employment*];

(v) section 49 [*landlord's notice: landlord's use of property*];

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Neither party had signed any Mutual Agreements to end tenancy. The tenants had filed an application to dispute the 10 Day Notice issued to the tenants, and both parties were awaiting the arbitration hearing set for September 3, 2019. It was undisputed that the landlord had locked the

tenants out on July 11, 2019, before obtaining any Orders allowing the landlord vacant possession.

Section 31 of the *Act* states as follows:

Prohibitions on changes to locks and other access

31 (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

(1.1) A landlord must not change locks or other means of access to a rental unit unless

(a) the tenant agrees to the change, and

(b) the landlord provides the tenant with new keys or other means of access to the rental unit.

By preventing the tenants' access to the rental unit, I find the landlord failed to comply with section 31 of the *Act*. I also find that the landlord had ended this tenancy in contravention of section 44 of the *Act*.

Based on these facts, I find that the tenants are entitled to an Order of Possession of the rental unit. This tenancy is to be restored within two days of the receipt of this Order by allowing the tenants access to the rental unit and their personal belongings, and this tenancy will continue until ended in accordance with the *Act* and tenancy agreement.

Conclusion

This tenancy is to be restored, and will continue until ended in accordance with the *Act* and tenancy agreement. I grant an Order of Possession to the tenants, and the tenants shall be provided access to the rental unit within 2 days of the receipt of this Order.

Should the landlord fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia

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 8, 2019

Residential Tenancy Branch