



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPM

Introduction

This hearing was convened by way of conference call. The Landlord filed an Application for Dispute Resolution on June 18, 2019 (the "Application"). The Landlord applied for an Order of Possession based on a mutual agreement to end the tenancy. The Landlord sought reimbursement for the filing fee.

The Agents for the Landlord appeared at the hearing. The Tenants appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Tenant R.D. provided his correct last name and this is reflected in the style of cause.

The parties agreed Tenant T.J. vacated the rental unit. Tenant T.J. said she did so two months prior to the hearing. The parties agreed Tenant R.D. still lives at the rental unit.

The Landlord submitted evidence prior to the hearing. The Tenants had not submitted evidence. I addressed service of the hearing package and Landlord's evidence.

Tenant T.J. testified that she did not receive the hearing package. She did not take issue with proceeding as she was aware of the hearing. Tenant R.D. had received the hearing package.

Both Tenants testified that they had not received the Landlord's evidence. The only evidence submitted by the Landlord was a Mutual Agreement to End a Tenancy signed by Tenant T.J., an Application for Tenancy and Canada Post customer receipts relating to service of the hearing package and evidence. The relevance of the Application for Tenancy was not made clear to me during the hearing.

The Tenants took issue with admissibility of the Landlord's evidence. I heard the Tenants on this issue; however, their submissions did not relate to admissibility.

The Agents for the Landlord testified that the hearing packages and Landlord's evidence were served on both Tenants by registered mail. The Landlord had submitted the Canada Post customer receipts for these. Agent A.G. testified that both packages were sent to the rental unit. The evidence shows these were sent June 23, 2019. Agent A.G. testified that the Mutual Agreement to End a Tenancy was dated July 01, 2019 and therefore the rental unit was the residence of both Tenants on June 23, 2019 when the packages were sent.

The Canada Post customer receipts have Tracking Number 1 and Tracking Number 2 on them. I have looked these up on the Canada Post website which shows the packages were "delivered to [the] concierge or building manager" on June 27, 2019. A signature for the delivery is available.

Receipt of the hearing packages is not in issue. Receipt of the evidence is in issue. The only evidence that is relevant to the issues on the Application is the Mutual Agreement to End a Tenancy. The Agents for the Landlord testified that this was included with the hearing packages. The Tenants testified that it was not.

Whether the Mutual Agreement to End a Tenancy was served on the Tenants or not, I admit it as evidence on this hearing. During the hearing, I reviewed the document with Tenant T.J. who agreed it is accurate. Tenant T.J. signed this document June 12, 2019 and therefore is aware of it and its contents. There could be no confusion that this document was relevant to the proceedings as the Application is for an Order of Possession based on the Mutual Agreement to End a Tenancy. Tenant T.J. acknowledged during the hearing that she had previously received a copy of the Mutual Agreement to End a Tenancy although she was not able to locate it during the hearing. The Tenants did not provide any compelling reason for why this document should not be admitted or what prejudice would result from the document being admitted in the circumstances. Given the nature of this document, I do not find that there is any prejudice to the Tenants in admitting it as evidence on this hearing.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the Mutual Agreement to End a Tenancy (the "Mutual Agreement") and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Mutual Agreement?

2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The parties agreed on the following. There is a written tenancy agreement between the Landlord and Tenants in relation to the rental unit. The tenancy started October 15, 2017. Rent is \$2,500.00 per month due on the first day of each month. The Tenants paid \$2,500.00 for the security and pet damage deposits. The agreement is signed by all three parties.

The Agents testified that the tenancy was a fixed term tenancy for one year and then became a month-to-month tenancy. Tenant R.D. was not sure about this.

I went over the Mutual Agreement with Tenant T.J. who agreed it is accurate. It is on the RTB form. It states the Landlord's name and Tenant T.J.'s name. It relates to the rental unit. It states that "The tenant(s)...agrees to vacate the" rental unit at 1:00 on the 01 day of July 2019. It was signed June 12, 2019 by Tenant T.J. and someone for the Landlord.

Agent J.G. testified as follows. He received information from the Landlord that Tenant T.J. was moving out of the rental unit and Tenant R.D. wanted another individual to move into the rental unit. If the tenancy agreement was left as is, Tenant T.J. would have remained on it and the new person would not be on it. He asked Tenant T.J. to sign the Mutual Agreement to end the tenancy for all parties with the idea that Tenant R.D. could negotiate a new tenancy with the Landlord. Tenant T.J. did sign the Mutual Agreement June 12, 2019. Tenant T.J. did vacate the rental unit.

Tenant T.J. testified as follows. Her and Tenant R.D. separated. She moved out of the rental unit July 01, 2019. She heard Agent J.G. was looking for her so she reached out to him. Agent J.G. said he needed her to sign a document. She told him she did not live at the rental unit anymore and asked why Tenant R.D. was not being contacted about it.

Tenant T.J. further testified as follows. She was misled about the Mutual Agreement. She was told she needed to sign it to remove her name from the tenancy agreement so she was not liable for what happened with the rental unit after she vacated. She was not told that signing the Mutual Agreement would end the tenancy for both Tenants. She asked the Agents what the document meant and was told it was meant to remove

her name from the tenancy agreement. She was taken advantage of. She would never have done this to Tenant R.D. if she had known that signing the Mutual Agreement would end the tenancy for both Tenants. She should have “googled” it but was trusting the professionals to explain it to her.

Tenant R.D. testified as follows. Tenant T.J. moved out. He was never informed about the Mutual Agreement. He heard from Tenant T.J. that she had signed a document to remove her name from the tenancy agreement. The Mutual Agreement was a shock to him. Tenant T.J. would never have done this if she had known that it ended the tenancy for both Tenants.

In reply, Agent J.G. testified that the Agents were not misleading about the Mutual Agreement.

Agent A.G. testified that Tenant R.D. paid July rent late and that this was indicated as for use and occupancy only. Tenant R.D. did not dispute that July rent was indicated as for use and occupancy only. Tenant R.D. testified that he had transferred August rent to the Landlord but that it had not yet been accepted. Agent A.G. testified that she had no knowledge of Tenant R.D. transferring August rent. The Agents sought an Order of Possession effective two days after service on Tenant R.D.

Analysis

Section 44(1)(c) of the *Residential Tenancy Act* (the “*Act*”) states that a tenancy ends if “the landlord and tenant agree in writing to end the tenancy”.

Pursuant to section 55(2)(d) of the *Act*, a landlord can apply for an order of possession of a rental unit if “the landlord and tenant have agreed in writing that the tenancy is ended”.

Policy Guideline 13 outlines the rights and responsibilities of co-tenants. It states in part:

...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...

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.

[emphasis added]

Given the testimony of the parties, there is no issue that the Tenants were co-tenants under one tenancy agreement.

Given the testimony of the parties, there is no issue that Tenant T.J. signed the Mutual Agreement.

Tenant T.J. testified that she was misled about the purpose of the Mutual Agreement. The Agents denied that they misled Tenant T.J. There is no evidence before me to support Tenant T.J.'s testimony on this point. I do not accept that Tenant T.J. was misled by the Agents in relation to the purpose of the Mutual Agreement given the conflicting testimony on this point and lack of evidence to support Tenant T.J.'s position.

Further, Tenant T.J. is expected to know her rights and obligations under the tenancy agreement and Act. It is not the responsibility of the Landlord or Landlord's agents to tell Tenant T.J. what her rights and obligations are. It was the responsibility of Tenant T.J. to look into the consequences of signing the Mutual Agreement if she was unaware of the consequences and wanted to know this information. Tenant T.J. could have done so by phoning the RTB and speaking to an Information Officer about this, by looking at the RTB website which includes information about ending a tenancy as well as access to Policy Guideline 13 or by seeking legal advice.

As well, the Mutual Agreement itself states as follows:

...Neither the landlord nor tenant are under any obligation to sign this form. By signing this form, it means that you understand and agree that your tenancy will end with no further obligations between you and the other party...If you have questions about your rights and responsibilities under the *Residential Tenancy Act*...contact the Residential Tenancy Branch by using the contact information at the bottom of this form”.

[emphasis added]

The Mutual Agreement further states, “The parties recognize that the tenancy agreement between them will legal terminate and come to an end at this time...” [emphasis added]. The Mutual Agreement does not state that it is meant to remove Tenant T.J.’s name from the tenancy agreement. It clearly states that it is meant to end the tenancy.

The Mutual Agreement is valid. There are no issues with the form or content of the Mutual Agreement. The Mutual Agreement ended the tenancy for both Tenants regardless of Tenant R.D. not being aware of it or signing it. This is clear from Policy Guideline 13. Pursuant to section 44(1)(c) of the *Act*, the tenancy ended July 01, 2019 based on the Mutual Agreement. Both Tenants were required to vacate the rental unit July 01, 2019.

I do not find that the Landlord and Tenant R.D. entered into a new tenancy in this case given the testimony of Agent A.G. that July rent was accepted for use and occupancy only. Tenant R.D. did not dispute this. Nor did Tenant R.D. submit that a new tenancy had been created between him and the Landlord. Further, I am not satisfied Tenant R.D. had paid August rent at the time of the hearing as the parties did not agree on this and there is no evidence before me that he had.

The Landlord is entitled to an Order of Possession. Pursuant to section 55(3) of the *Act*, I grant the Landlord an Order of Possession effective two days after service on Tenant R.D.

Given the Landlord was successful in this application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. The Landlord is issued a Monetary Order in this amount.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on Tenant R.D. This Order must be served on Tenant R.D. If Tenant R.D. does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

The Landlord is entitled to reimbursement for the \$100.00 filing fee. The Landlord is issued a Monetary Order for \$100.00. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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: August 12, 2019

Residential Tenancy Branch