



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT

Introduction

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

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

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 tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application.

The landlord confirmed in the hearing that they were unable to serve the tenant with their evidentiary materials as they did not have a forwarding address for the tenant. As the tenant was not served with the landlord's evidentiary materials, the landlord's written evidence was excluded for the purpose of this hearing.

Preliminary Issue – Tenant's Evidence

The landlord testified in the hearing that they did not receive the tenant's evidence package. The tenant testified that the landlord was served with his evidentiary materials the same time the landlord was served with the application.

Rule 3.14 of the RTB's Rules of Procedure establishes that a respondent must receive evidence from the applicant not less than 14 days before the hearing.

In this case, the landlord testified that they have not received any evidence from the tenant. 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 tenant testified that he had served the landlord with his evidence package, the landlord denies that they were ever served. I summarized the documents contained in the tenant's evidence package to all parties during the hearing, and the landlord confirmed that they have not received any of the documents contained in the package.

The landlord testified that they took no issue with the admittance of the RTB documents as they have previously reviewed these documents. In the absence of sufficient evidence to support that the tenant's evidence was served in accordance with section 88 of the *Act*, the tenant's evidence package will be excluded for the purposes of this hearing, with the exception of the documents that the landlord took no issue with admitting.

Issue(s) to be Decided

Is the tenant entitled to an Order of Possession?

Background and Evidence

Both parties confirmed that this tenancy began on February 1, 2017, with monthly rent set at \$1,190.00. The landlord was granted an Order of Possession after a hearing was held on December 18, 2018.

The landlord testified that on December 22, ~~2019~~ **2018**, the tenant had moved out, returned the keys, and the tenancy had ended. The landlord called a witness AG who testified in the hearing that he was present, and had witnessed the tenant moving his belongings into a white truck, and then later throwing the keys onto the property.

The tenant testified that he was moving out on December 22, ~~2019~~ **2018**, but before he could finish moving out all his belongings, the landlord had removed his belongings, refused him access to the rental unit and his belongings, and called the police. The tenant subsequently filed an application for monetary compensation, which was dismissed on May 28, 2019 after a hearing was held on May 23, 2019. The tenant filed an application for the return of his personal belongings, which was found *res judicata* by the Arbitrator on July 26, 2019 following a hearing that was held on July 25, 2019.

The landlord testified that the rental unit is no longer vacant as it was rented out on August 1, 2019. The landlord responded that the tenancy had ended on December 22, ~~2019~~ **2018** when the tenant had returned the keys. The landlord also testified that the matter is before the criminal courts, and the tenant was released on bail conditions that

prohibit the tenant from having contact with the landlord, as well as attending this residence.

The tenant testified that the landlord has not been truthful, and that he simply wanted access to his personal belongings.

Analysis

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.

I have considered the sworn testimony of both parties, and I find that it was disputed as to whether the tenant had finished moving out on ~~August~~ **December 22, 2019 2018** before the landlord took vacant possession. The only application that was filed by the tenant for today's hearing was for an Order of Possession, and I must now consider whether the tenant is entitled to that Order as requested.

There is contradictory testimony as to whether the unit is vacant, or occupied. Furthermore, I find it undisputed that the tenant is currently bound by an order of the provincial court in relation to criminal proceedings that prohibits him from having contact, directly or indirectly, with the landlord. The tenant is also bound by order that prohibits him from attending the residence for which the tenant is applying for an Order of Possession of.

Although the tenant indicated in the hearing that he would like an order for him to be returned his personal belongings, no such application is before me today, and accordingly, I decline to render a decision regarding that matter.

In light of the fact that the unit is now possibly occupied, and in light of the undisputed fact that the tenant is currently bound by an order of a Provincial Court Judge or Justice to refrain from having contact with the landlord, or attending at the residence, I dismiss the tenant's application for an Order of Possession without leave to reapply.

Conclusion

The tenant's application is dismissed without leave to reapply.

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 15, 2019

Residential Tenancy Branch

DECISION AMENDED PURSUANT TO SECTION 78(1)(A)
OF THE RESIDENTIAL TENANCY ACT ON AUGUST 26,
2019 AT THE PLACES INDICATED IN BOLD AND
~~STRIKETHROUGH~~ ON THE TITLE PAGE, PAGES 2 and 4
OF THIS DECISION.