



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, FFT

Introduction

On October 26, 2019 the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking an order of possession of the rental unit, as well as the return of the filing fee.

The Tenants and the Landlord attended the hearing at the appointed date and time and provided affirmed testimony.

The Tenants testified that they served their Application and documentary evidence package to the Landlord in person on October 31, 2019. The Landlord confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The Landlord testified that the Tenants did not provide the Landlords with their forwarding address and that the Tenants’ address for service listed on the Application was the dispute address. The Landlord stated that she made attempts to obtain the Tenants’ forwarding address through email, however, the Tenants did not provide the Landlord with an alternate address and stated, “I will talk to you at the hearing”. The Landlord stated that she served the Tenants with her documentary evidence posting it to the door of the dispute address on November 4, 2019. The Tenants stated that they did not received the Landlord’s documentary evidence. I find that the Landlord’s documentary evidence was sufficiently served to the Tenants last known address, pursuant to Section 71 of the *Act*.

The parties were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Do the Tenants have a legal right to possess the rental unit and should the Tenants receive an order of possession, pursuant to Section 54 of the Act?
2. Are the Tenants entitled to an order granting the recovery of the filing fee, pursuant to Section 72 of the Act?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on October 1, 2017. The Tenants are required to pay rent in the amount of \$1,200.00 to the Landlord which is due on the first day of each month. The Tenants paid a security deposit in the amount of \$600.00 which the Landlord continues to hold.

The Tenants stated that they had been away from the rental unit for some time throughout October 2019. On October 18, 2019, the Tenants attended the rental unit to find that someone else had moved into the rental unit. The Tenants stated that it was a different occupant who also lived on the rental property who had wanted the Tenants' rental unit for some time. The Tenants stated that the Landlord has taken their possessions and have denied them entry to the rental unit. The Tenants are seeking to regain possession of the rental unit and their belongings.

The Landlord responded by stating that the Tenants had previously tried to sublet the rental unit which resulted in the Landlord issuing a One Month Notice for Cause on September 19, 2019. The Landlord stated that the Tenants did not dispute the One Month Notice. The Landlord stated that the Tenants failed to pay rent for October 2019 which resulted in the Landlord issuing a 10 Day Notice to End Tenancy on October 2, 2019. The Landlord stated that the Tenant's did not dispute the 10 Day Notice either.

The Landlord stated that she witnessed the Tenants moving their possessions from the rental unit shortly thereafter. The Landlord stated that while the Tenant had not paid rent for October 2019 and were seen moving their possessions out of the rental unit, she decided to inspect the rental unit on October 18, 2019. The Landlord stated that she found that the rental unit had been emptied, less several small items which were packed up on one pallet and stored in a safe location as it was apparent that the Tenants had abandoned the rental unit. The Tenants stated that the majority of their possession remained in the rental unit and denied having moved out.

During the hearing, the Landlord stated that she has offered the Tenants several opportunities to collect their belongings, however, the Tenants have not yet attended to gather their possessions.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

With respect to the Tenants' claim that the Landlord has created a new tenancy and is not permitting the Tenants access to the rental unit; section 29 (1) of the Act provides the following:

A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;*
 - (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:*
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
 - (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
 - (d) the landlord has an order of the director authorizing the entry;
 - (e) the tenant has abandoned the rental unit;**
 - (f) an emergency exists and the entry is necessary to protect life or property.
- (2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

In this case, the Tenants stated that they had been away from the rental unit for some time throughout October 2019. On October 18, 2019, the Tenants attended the rental unit to find that someone else had moved into the rental unit. The Tenants stated that it was a different occupant who lived on the rental property who had wanted the Tenants' rental unit for some time. The Tenants stated that the Landlord has taken their possessions and have denied them entry to the rental unit.

The Landlord responded by stating that she has served the Tenants two Notices to End Tenancy and that the Tenants failed to pay rent for October 2019. The Landlord stated that she witnessed the Tenants moving their possessions from the rental unit shortly thereafter. The Landlord stated that she decided to inspect the rental unit on October 18, 2019. The Landlord stated that she found that the rental unit had been emptied, less several small items which were packed up and stored on one pallet and stored in a safe location as it was apparent that the Tenants had abandoned the rental unit.

In this case, the Tenants have indicated that the Landlord has formed a new tenancy and that they have been denied access to the rental unit. I find that the Act does not

provide me with any provisions to end the newly formed tenancy. As such, I dismiss the Tenants' Application for an Order of Possession without leave to reapply.

During the hearing, the Landlord stated that she has offered the Tenants several opportunities to collect their belongings, however, the Tenants have not yet attended to gather their possessions. I find that the Tenants should make arrangements with the Landlord to collect their belongings at a mutual agreed upon date and time. The Tenants are at liberty to seek monetary compensation for missing items or loss associated with the end of the tenancy.

As the Tenants were unsuccessful with their Application, I find that they are not entitled to the return of the filing fee.

Conclusion

The Tenants Application for an Order of Possession is dismissed without leave to reapply given that the new tenancy has been created and the Act does not allow for an Arbitrator to end a tenancy for this purpose. I find that the Tenants are at liberty to make arrangements with the Landlord to collect their belongings. The Tenants are at liberty to reapply for monetary compensation for damage or loss.

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: November 12, 2019

Residential Tenancy Branch