



Dispute Resolution Services

Page: 1

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.

KT testified on behalf of 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.

At the outset of the hearing, it was brought to my attention that the landlord's surname was misspelled. As neither party was opposed, the landlord's name was corrected to reflect the landlord's proper name.

The landlord confirmed receipt of the tenant's 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 tenant's application and evidence. The landlord did not serve their evidentiary materials on the tenant for this hearing. As these documents were not served in accordance with section 88 of the *Act*, the landlord's written evidence was excluded. The landlord was allowed to provide oral testimony for this hearing.

Issue(s) to be Decided

Is the tenant entitled to an Order of Possession?

Background and Evidence

This fixed-term tenancy began on October 20, 2019 with monthly rent set at \$870.00, payable on the first of every month. The tenant originally had a co-tenant, NW, who was his girlfriend at the time. The tenants paid a security deposit in the amount of \$400.00.

NW moved out on December 10, 2019 after signing a Mutual Agreement with the landlord to end this tenancy. The landlord allowed RO to remain as a tenant on the condition that he not allow NW back into the rental unit due to the amount of domestic abuse, and damage to the property.

The landlord testified that on December 15, 2019, a 1 Month Notice to End Tenancy was issued to the tenant, but he failed to move out by the effective date of the 1 Month Notice.

Both parties testified in the hearing that the tenant's main access to the rental unit was a door that was broken. The frame and lock to the door was broken some time in October of 2019, and has not been fixed. Both parties confirmed that as of the hearing date, the door and frame had yet to be fixed.

The tenant testified that on or about January 22, 2019 he had discovered that he could no longer access the rental unit as the door was blocked from the inside.

The landlord testified that an incident took place where the tenant and NW grabbed the landlord's phone, punched the landlord in the face, and ran off. The landlord filed an application for the early termination of this tenancy which is scheduled for March 20, 2020. The landlord testified that they were advised by the police to fix the door, and change the lock as soon as possible, but the landlord decided to block the door from inside with a wardrobe instead. The landlord confirmed that the rental unit has not been rented out to new tenants.

The tenant disputes that he had abandoned the rental unit, and testified that he was locked out by the landlord. The tenant is seeking an Order of Possession for the rental unit.

Analysis

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 blocking the tenant's door, I find the landlord failed to comply with section 31 of the *Act*. Although the landlord may have contravened the *Act* by blocking the door, I do not find that the landlord has retaken possession of the rental unit. Accordingly, the tenant's application for an Order of Possession is dismissed without leave to reapply.

As the tenant has not filed for any other orders under the *Act*, I decline to make any further orders at this time. I remind the landlord of their obligations under section 31 of the *Act*.

Conclusion

I dismiss the tenant's application 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 *ACT Tenancy Act*.

Dated: March 17, 2020

Residential Tenancy Branch