



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Welbec Properties Inc and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPT FFT

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; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The personal landlord confirmed they represented the corporate landlord as well.

The landlord acknowledged that they were served with the tenants' application and evidence. Based on the testimony I find that the landlord was served with the tenants' materials in accordance with sections 88 and 89 of the Act.

At the outset the parties agreed that the dispute address was incorrectly identified in the application and it is actually in a neighboring municipality. The address has been corrected in this decision.

The tenants disputed being served with the landlord's evidence. The landlord testified that it was sent by registered mail but was unable to provide any evidence that the materials were served. I advised the parties that I would only be able to consider those pieces of evidence included in the landlord's package that the tenant confirmed having received on prior occasions. I have taken this approach after considering the guidance provided by Rule 3.17 of the Rules of Procedure, which outlines the circumstances whereby an Arbitrator can consider late evidence.

Issue(s) to be Decided

Are the tenants entitled to an Order of Possession of the rental unit?

Are the tenants entitled to recover their filing fee from the landlords?

Background and Evidence

This fixed term tenancy began in November 2019. Monthly rent was \$1,550.00 payable on the first of each month. There is a written tenancy agreement between the corporate landlord and the tenant JA. The applicant PS is not a party to the agreement though the tenants submit that she was a resident of the rental suite with the knowledge and consent of the landlord.

On April 27, 2020 the tenant JA signed a Notice to Vacate effective immediately ending the tenancy. The landlord testified that the tenant chose to end the tenancy as they explained that the co-tenant had kicked them out of the rental unit. The tenant JA confirmed that they signed the Notice to Vacate and provided the reason for leaving as “My x kicked me [the tenant JA] out and she using drugs”. The tenant JA testified that they were unaware that signing a document that states that they are ending the tenancy and vacating the rental unit meant that they were ending the tenancy.

The tenants now seek an order to have the tenancy reinstated and return to the rental suite. No rent has been paid for the month of May 2020. The landlord said that they have found a new occupant to take possession of the rental unit as of June 1, 2020.

Analysis

I accept the evidence of the parties that the tenant JA and landlord entered into a fixed term tenancy agreement in November 2019. I accept the evidence that the tenant JA signed a Notice to Vacate April 27, 2020 agreeing to end the tenancy agreement and to provide vacant possession of the rental unit to the landlord.

Section 44(1)(c) provides that one of the ways in which a tenancy may be ended is if the landlord and tenant agree in writing to end the tenancy. I find that the signed Notice to Vacate of April 27, 2020 is an effective and enforceable written agreement to end the tenancy.

I find that the tenant is now reneging on this agreement and attempting to have the tenancy reinstated. I find the tenants’ submission that they did not understand the

implications of the document to not be particularly convincing. The tenant provided a written explanation of the “Reason for leaving”, identified the address of the rental unit they were vacating and signed and dated the document. It is evident that the tenant understood that they were terminating the tenancy.

Residential Tenancy Policy Guideline 13 outlines the rights and responsibilities of co-tenants. Co-tenants are tenants who rent the same property under the same tenancy agreement and are jointly and severally liable for the tenancy.

While the parties disagree on whether the other applicant PS was a co-tenant or occupant under this tenancy agreement, I find that determining their status is irrelevant to the matter at hand. No evidence was provided that there is an agreement between the landlord and PS. If PS is a co-tenant then as co-tenants are joint and severally liable for a tenancy they are bound by the actions of JA in ending this tenancy. If PS is an occupant they have no rights or obligations under the original tenancy agreement.

I find that this was a tenancy that was ended in accordance with section 44(1)(c) of the Act on April 27, 2020 by a written agreement signed by the tenant JA and agreed to by the landlord. I therefore find that the tenant is not entitled to an Order of Possession to a rental unit they no longer have a right to possess. Accordingly, I dismiss the tenants’ application in its entirety without leave to reapply.

Conclusion

The tenant’s application is dismissed in its entirety 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: May 28, 2020

Residential Tenancy Branch