



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, FF

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;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Extensive discussions took place over a 30 minute period on the tenant's submitted documentary evidence. Both parties confirmed that the tenant's submitted two named files were all that were necessary to proceed with the hearing. Both parties confirmed that the tenant served the landlord with the two named files (the tenant's evidence) via email on June 22, 2020 and again on June 24, 2020. Both parties confirmed that the landlord served the tenant with the 4 submitted documentary evidence package(s) via Canada Post Registered Mail. Neither party raised any other service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served.

Issue(s) to be Decided

Is the tenant entitled to an order of possession?

Is the tenant entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on June 1, 2013 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated May 5, 2013. The monthly rent was \$820.0 payable on the 1st day of each month. A security deposit of \$410.00 was paid on June 1, 2013.

The tenant seeks an order of possession as a result of the landlord changing the locks on the rental unit without notice to the tenant. The tenant stated that he continues to pay rent for the unit despite being locked out by the landlord. The tenant provided direct testimony that numerous requests for the landlord to provide a key for the tenant to access the rental unit have been denied. The landlord confirmed that the lock to the unit was changed upon discovering the unit unsecured. The landlord further stated that it could not be secured because the landlord did not have a key to the unit. The landlord stated that the tenant was notified that access could be gained upon notice to the landlord, but that the tenant has not been provided a key for access.

Extensive discussions took place with both parties in that the landlord claims that the tenant entered into a new tenancy agreement in a different unit but failed to complete the move-out of this rental unit. Both parties confirmed that the tenant has not provided notice to end the tenancy for this rental unit and is still responsible for it. Both parties confirmed that the tenant does not currently occupy the new rental unit nor this rental unit.

Analysis

Section 54 of the Act states in part that a tenant who has entered into a tenancy agreement with a landlord may request an order of possession of the rental unit by making an application for dispute resolution.

In this case, I accept the undisputed affirmed testimony of both parties that the landlord has changed the locks to the rental unit without providing a key to the tenant. Both parties confirmed that the tenant has not provided notice to end this tenancy.

Section 30 of the Act states in part that the landlord must not unreasonably restrict access to the residential property.

Section 31 of the Act also states that a landlord must not change the locks or other means that give access to the residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

I find based upon the above noted undisputed evidence of both parties that the landlord has changed the locks without providing new keys to the tenant. On this basis, the tenant is granted an order of possession. The landlord is to immediately provide a key to the tenant for access to this rental unit.

The tenant having been successful is entitled to recovery of the \$100.00 filing fee. As the tenancy continues, I authorize the tenant to withhold one-time \$100.00 from the next monthly rent upon receipt of this decision.

Conclusion

The tenant is granted an order of possession and the landlord is ordered to immediately provide a key to the rental unit.

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: July 02, 2020

Residential Tenancy Branch