



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 attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to an order of possession?

Background and Evidence

The tenant gave the following testimony. The tenant testified that he had to move out of the unit because of sewer issues in the suite. The tenant testified that the landlord made an insurance claim and that the restoration company was conducting repairs. The tenant testified that he was told that he would be able to come back and that he could have the unit when it was completed. The tenant testified that the unit has been complete for over a month but has still not been given access to the unit.

The landlord gave the following testimony. The landlord testified that the tenant is incorrect and that the unit is not yet complete. The landlord testified that numerous items still need to be repaired. The landlord testified that the most important issue is that the property has been sold. The landlord testified that the water damage occurred on August 7, 2020. The landlord testified that the tenant advised that he would be moving out anyways and didn't know if he would be coming back. The landlord testified that the tenant didn't respond to text messages and emails about the property being sold and assumed he had moved on.

Analysis

It is worth noting, that despite my clear and detailed instructions of what this hearing was about and the one and only issue that I was able to address, both parties continually referred to monetary issues and a hearing that the tenant alleges is going to happen in the future. It was explained numerous times during this hearing that the only issue that would be addressed is whether the tenant was granted an order of possession to the unit or not. At the end of the hearing both parties indicated that they understood the process and the possible outcomes. I proceeded and completed the hearing on that basis.

The tenant is requesting an order of possession to reclaim the unit that he alleges is his. The landlord submits that the unit is not ready for occupation, the tenant had moved out and most importantly that the property has been sold and they no longer have legal claim to the property. As the property has been sold, I find the principle of third party rights must be considered, as a result, I am unable to grant an order of possession to the tenant as the landlords no longer own the property and that it would infringe on the rights of the new owners, 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: November 19, 2020

Residential Tenancy Branch