



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 963 Schubert Drive Investments
Ltd and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the Residential Tenancy Act (the Act), seeking:

- An Order of Possession for the rental unit.

The hearing was convened by telephone conference call and was attended by the Tenant, the Tenant's Witness/Support Person (M.R.) and an agent for the Landlord A.R. (the Agent), all of who provided affirmed testimony. The Agent confirmed receipt of the Application and Notice of Hearing, which were served by the Tenant on another agent for the Landlord, and the hearing therefore proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the Branch) under Section 9.1(1) of the *Act*.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the Application.

Preliminary Matters

Preliminary Matter #1

During the hearing the Tenant identified that the other applicant named in the Application is their advocate, who did not appear at the hearing. As the Advocate has no legal obligations in relation to the tenancy, I have removed them as a named party to this dispute so that they will not be named in any orders resulting from the Application.

Preliminary Matter #2

The Agent stated that the proper legal name for the Landlord has not been recorded on the Application as several numerical digits are missing from the name of the corporation. The Tenant acknowledged that a clerical error in the recording of the Landlord's legal name may have occurred. I confirmed the correct legal name for the Landlord as set out in the tenancy agreement with the parties during the hearing and amended the Application to correctly name the Landlord as the parties were in agreement about the correct legal name for the Landlord and because I am satisfied that the Landlord knew that this Application related to them, as they sent the Agent to the hearing to act on their behalf.

Preliminary Matter #3

During the hearing the Tenant acknowledged that they served their documentary evidence on an agent for the Landlord other than the Agent who appeared on behalf of the Landlord at the hearing, and at a different address than that listed as the Landlord's address for service in the tenancy agreement. The Agent also acknowledged sending the Landlord's documentary evidence to the Tenant by email, which is not an approved method of service under the Act. Despite the above, the parties agreed to the acceptance of this documentary evidence for my consideration at the hearing.

Issue(s) to be Decided

Is the Tenant entitled to an Order of Possession for the rental unit?

Background and Evidence

Although a copy of the tenancy agreement was submitted for my review, it was illegible due to the size and format in which it was submitted. As a result, I had the parties

confirm the terms of the tenancy agreement during the hearing, which I have set out below.

The parties agreed that a written one year fixed term tenancy agreement was entered into on November 6, 2020, for a tenancy set to commence on November 15, 2020, and end on November 30, 2021. However, during the hearing the parties agreed that the Tenant and their roommate K.J. (whose name has been recorded on the cover page for this decision), who was also a co-tenant under the tenancy agreement, moved in early on approximately November 9, 2020.

The parties agreed that rent in the amount of \$2,150.00 was to be paid on the first day of each month, and that security and pet damage deposits were paid in the amount of \$1,075.00 each, which the Landlord still holds. The Agent stated that the co-tenant authorized the Landlord to withhold the deposits at the end of the tenancy, but the Tenant disagreed. In any event, the parties were in agreement that neither deposit has been returned to either the Tenant or the co-tenant.

During the hearing the parties were in agreement that the Tenant no longer resides in the rental unit, which has been re-rented by the Landlord to a new occupant effective January 1, 2021. Although there was no dispute that the co-tenant signed a mutual agreement to end the tenancy effective December 4, 2020, at 3:00 P.M., a copy of which was submitted by the Agent for my review, the Tenant stated that they did not become aware of this mutual agreement until December 4th or December 5th 2020, when the Landlord had the locks to the rental unit changed without their knowledge or consent and without providing them with a new key, effectively locking them out of the rental unit. The Tenant stated that they subsequently found their possessions out in the snow on approximately December 6th or December 7th, 2020, many of which they stated were damaged by snow or kitty litter and cat feces and some of which had either been disposed of or stolen. In support of their testimony, the Tenant submitted a video and photographs of their possessions strewn about the lawn of the rental unit.

The Agent acknowledged having the locks changed on or about December 4, 2020, and having the possessions remaining in the rental unit at that time removed but stated that they did this at the request of the co-tenant, who had advised another agent for the Landlord that they had taken what they wanted and to dispose of the rest. As a result, the Agent stated that they had the locks changed and hired a moving company to remove the remaining belongings left in the rental unit. The Agent acknowledged that no bailiff was hired or used to remove personal possession from the rental unit and provided no testimony or documentary evidence that they had either an Order from the

Branch allowing them to change the locks, or an Order of Possession for the rental unit, as their position was that the Landlord was entitled to change the locks and remove any possessions remaining in the rental unit when the Tenant and co-tenant failed to fully vacate the rental unit in accordance with the mutual agreement.

Although the Tenant applied for an Order of Possession, the Tenant stated during the hearing that they have since found alternate accommodation and no longer require possession of the rental unit. Instead, the Tenant sought the return of any personal property still in possession of the Landlord or the Landlord's agents. The Agent did not disagree with the Tenant's position that they no longer require an Order of Possession as the Landlord's position is that one should not be granted to the Tenant as the co-tenant had lawfully ended the tenancy for both tenants on December 4, 2020, by way of the mutual agreement. The Agent also stated that neither the Landlord nor their agents have retained any personal possessions belonging to the Tenant or the co-tenant and therefore there is nothing to be returned to the Tenant.

Analysis

Based on the testimony of the parties during the hearing, I am satisfied that Tenant and their roommate were co-tenants under their written tenancy agreement, as set out in section B of Policy Guideline 13. I am also satisfied that the co-tenant and an agent for the Landlord signed a mutual agreement to end the tenancy effective December 4, 2020, at 3:00 P.M. in accordance with section 44(c) of the Act.

Although I accept the Tenant's testimony that they were unaware of the mutual agreement to end tenancy at the time it was signed by the co-tenant, section E of Policy Guideline 13 states that a tenancy may end if the landlord and any tenant or co-tenant mutually agree in writing to end the tenancy. It also states that when a tenancy ends in these circumstances, the notice or agreement to end the tenancy applies to all co-tenants. Based on the above, I am satisfied that the tenancy therefore ended for both the Tenant and the co-tenant on December 4, 2020, at 3:00 P.M. as a result of the above noted mutual agreement to end tenancy signed by the co-tenant and an agent for the Landlord.

Although the Agent appears to have considered the rental unit and the belongings remaining therein after December 4, 2020, at 3:00 P.M. abandoned by the Tenant and the co-tenant based on statements they believe were made by the co-tenant to another agent for the Landlord, the other agent did not appear at the hearing or provide any documentary evidence, such as a witness statement, confirming that the co-tenant had

advised them to dispose of the remaining possessions, and no evidence from the co-tenant to this affect was submitted for my consideration. Further to this, the Landlord was clearly aware from the tenancy agreement that the Tenant also resided in the rental unit and there is no evidence that any attempts were made to ascertain whether the Tenant had also vacated or whether any possessions remaining in the rental unit after 3:00 P.M. on December 4, 2020, belonged to the Tenant. As a result, I am not satisfied that the rental unit or the possessions contained therein were abandoned by the Tenant as stated by the Agent and instead find that the Tenant was overholding the rental unit when both they, their minor child, and their possessions remained in the rental unit after December 4, 2020, at 3:00 P.M.

Despite the above, I do not find that the Tenant is entitled to Order of Possession for the rental unit, regardless of the fact that the Landlord changed the locks to the rental unit without an Order from the Branch allowing them to do so or providing the Tenant with a copy of the new keys, or how the Landlord or their agents removed the Tenant and or the co-tenants possessions from the rental unit, as I am satisfied that the tenancy legally ended at 3:00 P.M. on December 4, 2020, by way of a mutual agreement signed by the co-tenant and that the Tenant was overholding the rental unit after that date. In any event, the Tenant acknowledged during the hearing that they are no longer seeking possession of the rental unit as they have since found alternate accommodation.

Despite the above, the Landlord should be aware that section 31 of the Act prohibits landlords from changing locks or other means that give access to residential property either with or without the tenant's consent, unless the landlord provides the tenant with new keys or other means of access to the rental unit. The Landlord should also be aware that section 57 of the Act specifies the course of action to be taken when a tenant overholds a rental unit and that section 57(2) specifically prohibits landlords from taking actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules.

Further to the above, the Landlord is cautioned that Part 5 of the Residential Tenancy Regulation (the Regulation) has very specific requirements regarding how personal possessions believed to have been abandoned by tenants must be dealt with, in particular, the Landlord should be aware that section 30 requires landlord's or their agents dealing with personal property believed to have been abandoned under this Part, to exercise reasonable care and caution required by the nature of the property and the circumstances to ensure that the property does not deteriorate and is not damaged, lost or stolen as a result of an inappropriate method of removal or an unsuitable place of storage.

As the Agent stated that neither the Landlord nor an agent for the Landlord retains possession of any of the Tenant's belongings and the Tenant has not submitted proof of any such possession, I am not satisfied that the Landlord or their agents retain any of the Tenant's belongings. As a result, I have not ordered the Landlord to return any belongings to the Tenant.

Conclusion

The Tenant's Application seeking an Order of Possession for the rental unit is dismissed 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.

Dated: December 29, 2020

Residential Tenancy Branch