



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT

Introduction

This expedited hearing dealt with the tenant's application pursuant to section 54 of the *Residential Tenancy Act* (the "Act") for an Order of Possession of the rental unit.

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.

As both parties were present service was confirmed. The parties each testified that they were in receipt of the respective materials and based on their testimonies I find they were each duly served in accordance with section 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to an Order of Possession of the rental unit?

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 arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree that this periodic tenancy began on May 10, 2020. The rental unit is the upstairs portion of a detached home. Neither the landlord nor the tenant have given a Notice to End Tenancy in accordance with the *Act*.

The parties agree that during a time when the tenant was absent from the rental unit, new occupants have taken possession of the rental unit. The tenant confirmed that they are no longer seeking an Order of Possession of the rental unit to displace the existing

occupants but have incurred monetary losses for alternative lodgings and for possessions that were left in the rental unit.

Analysis

As noted in Residential Tenancy Policy Guideline 51, while a tenant may apply for an order of possession for the rental unit pursuant to section 54 of the *Act* if they have a tenancy agreement with the landlord, the director may not be able to grant an order in circumstances where another renter is occupying the rental unit.

In the present circumstances the parties agree that a new renter is occupying the rental unit and the tenant withdrew their application seeking an order of possession. While the tenant said they have incurred monetary damages and loss, it is not open to amend an expedited hearing to add new heads of claim. The tenant is at liberty to apply for monetary compensation for damages or loss under the *Act* through a separate application.

Conclusion

The tenant's present application 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 *Residential Tenancy Act*.

Dated: January 4, 2021

Residential Tenancy Branch