



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT

Introduction

The tenant filed an Application for Dispute Resolution on December 17, 2020 for an order of possession of the rental unit. The matter proceeded on an expedited basis, with the Application filed on an urgent priority. The hearing took place pursuant to section 74(2) of the *Residential Tenancy Act* (the “*Act*”) on January 7, 2021.

The tenant attended the hearing; however, the landlord did not. I provided the tenant the opportunity to present oral testimony and make submissions during the hearing.

In the hearing, the tenant provided they delivered notice of this hearing to the landlord on December 24, 2020. They did so in person, with a witness, to the landlord’s resident address, that which is provided on the original tenancy agreement. They hand-delivered the document to an adult residing at that address.

The Residential Tenancy Branch Rules of Procedure specify that a Notice of an expedited hearing must be served “within one day of that Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch.” Given that the Notice of Dispute Resolution in this matter was generated on December 23, 2020, I find the tenant has followed the applicable rule for serving this notice to the landlord within the specified timeline.

As provided for by the tenant in their affirmed testimony, I find they met the requirement of the *Act* section 89 regarding a proper method of service of the Notice. On this basis, the hearing proceeded.

Issue to be Decided

- Is the tenant entitled to possess the rental unit, pursuant to section 54 of the *Act*?

Background and Evidence

The tenant provided a copy of the tenancy agreement that both parties signed on July 7, 2020. This specifies the start of the tenancy begins on July 10, 2020. The rent amount is \$1,700 payable on the 15th of each month. The tenant paid a security deposit of \$850 on July 7, 2020.

In the hearing, the tenant narrated the following timeline of events:

- they did not pay the December rent on the 15th, and there was no call from the landlord
- the landlord did send pictures of images concerning strata fines imposed under the pretext of noise – this was unbeknownst to the tenant prior to this message
- on December 16th, the tenant could not enter the building – their key fobs did not work at the main entrance of the building
- after their query to the landlord, the tenant received a message from the landlord on that same day.

A copy of the text message from December 16 is in the tenant's evidence:

So since the rent is not paid, You have been notified about end of tenancy. Please note the fobs has been disabled to make sure no one has unauthorized access to our suite and there's no activity which breaks any rule or law. You have been notified sufficiently. Please make arrangements to leave the suite and hand back keys ASAP.

After this, with the assistance of the building concierge, the tenant discovered the landlord had requested the change for the fobs. Additionally, the landlord informed the concierge that the tenant had damaged the rental unit. The tenant has not had access to the building since this brief visit with the concierge on December 17th. Since that time, the tenant has been paying for rent elsewhere.

In the hearing, the tenant reiterated they received no notice to end tenancy from the landlord.

The landlord did not attend to provide evidence or testimony in response to the tenant's Application.

Analysis

I find that the landlord did not have an order of possession authorizing possession of the unit, nor a sanctioned eviction of the tenant. There is no evidence the landlord sought or received a

Supreme Court writ of possession. Based on this, I find the landlord did not have the legal authority to evict the tenant from the rental unit on December 16, 2020.

I find the tenant has the legal right to possess the rental unit. This is based on the uncontested statements of the tenant in the hearing, as well as the key piece of evidence in the form of the text message from the landlord, reproduced above.

I grant the tenant an order of possession effective immediately. The landlord is so ordered to allow the tenant access to the rental unit. This entails a reactivation of the key fob, effective immediately.

Conclusion

I find the landlord did not have the authority to evict the tenant from the rental unit unilaterally on December 16, 2020. The tenant has an order of possession effective immediately. I order the landlord to allow the tenant access to the rental unit, via an active working key fob or other viable means of entry.

The tenant has leave to apply for any loss as a result of being illegally evicted from 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 *Act*.

Dated: January 7, 2021

Residential Tenancy Branch