



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEW CHELSEA SOCIETY and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPM, OPN, OPQ, MNRL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein they sought the following relief:

- an Order of Possession based on a Mutual Agreement to end tenancy signed by the Tenant, C.W. on July 31, 2020;
- an Order of Possession based on a Tenant's Notice to End Tenancy signed by the Tenant, R.W.;
- an Order of Possession based on a 2 Month Notice to End Tenancy because Tenant Does Not Qualify for Subsidized Rental Unit served on the Tenant, C.W.;
- monetary compensation from the Tenants for unpaid rent; and,
- recovery of the filing fee.

The hearing was conducted by teleconference at 9:30 a.m. on February 23, 2021. The Landlord's representative, D.D. and the Tenant, C.W. called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

Preliminary Matter—Tenants' Names on Application

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure*. Rule 4.2 of the *Rules* allows me to amend an Application for Dispute Resolution in circumstances where the amendment might reasonably have been anticipated. The authority to amend is also provided for in section 64(3)(c) of the *Residential Tenancy Act* (the "*Act*") which allows an Arbitrator to amend an Application for Dispute Resolution.

On the Application the Landlord only named the original Tenant, R.W.'s son, C.W. as Tenant. A review of the tenancy agreement confirms the original tenancy was between the Tenant, R.W. and the Landlord. The Tenant's son moved into the rental unit during the tenancy and did not vacate when his mother, R.W., gave notice to end her tenancy in the summer of 2020. In the hearing before me the Landlord sought an Order of Possession based on R.W.'s notice to end the tenancy.

The Landlord's representative stated that they have accepted payment from C.W. since R.W. vacated the rental unit, however he claimed they accepted those funds for use and occupancy only. Although the acceptance of these funds for use and occupancy only suggests the Landlord did not intend to create a tenancy with C.W., the Landlord also sought an Order of Possession based on a signed mutual agreement to end tenancy signed by C.W. as a tenant, which was to be effective August 31, 2020. Further, the Landlord sought an Order of Possession based on a 2 Month Notice on the basis that C.W. did not qualify for subsidized housing.

In all the circumstances, and for the purposes of this Decision and related Order only, I find the Landlord created a tenancy which includes both R.W. and C.W. I therefore Amend the Landlord's Application to included both R.W. and C.W. as tenants.

Settlement and Conclusion

During the hearing the parties resolved possession of the rental unit by mutual agreement. The terms of this agreement are recorded in this my Decision and Order pursuant to section 63 of the *Residential Tenancy Act* and Rule 8.4 of the *Residential Tenancy Branch Rules of Procedure*. As the parties resolved this matter by agreement, I make no findings of fact or law with respect to their relative positions.

The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the nature of this full and final settlement of this matter.

The terms of their settlement follow.

1. The tenancy shall end and the Tenants shall vacate the rental unit by no later than 1:00 p.m. on March 15, 2021.

2. The Landlord is granted an Order of Possession effective 1:00 p.m. on March 15, 2021. The Landlord must serve the Order on the Tenants as soon as possible and may if necessary, file and enforce the Order in the B.C. Supreme Court.
3. The Landlord may retain \$100.00 from the Tenants' \$375.00 security deposit as recovery of the filing fee. The balance of the security deposit shall remain in trust and be dealt with in accordance with section 38 of the *Act*.

The Landlord's claim for monetary compensation from the Tenants for unpaid rent is dismissed with leave to reapply.

As noted, my finding with respect to the standing of C.W. as Tenant and party to these proceedings, applies to this Decision and Order of Possession only. Should the Landlord pursue monetary compensation from the Tenants, the status of C.W. as a tenant or occupant, as well as the relative liability of the Tenants shall be determined solely by the Arbitrator considering that Application. Should the Landlord make such a claim, they must provide a copy of this my Decision in their application materials.

Pursuant to section 71 of the *Act*, I order that the Landlord may serve any further applications on the Tenant, C.W. by email at the email address provided on the unpublished cover page of this my Decision.

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: February 23, 2021

Residential Tenancy Branch