



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPT, FFT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for an Order of Possession and to recover the fee for filing this Application for Dispute Resolution.

Legal Counsel for the Tenant stated that on February 18, 2021 the Dispute Resolution Package and evidence the Tenant submitted to the Residential Tenancy Branch on February 18, 2021 were delivered to the business office of the Landlord's legal counsel. Legal Counsel for the Landlord acknowledged receiving these documents. As the documents were received by the Landlord's Legal Counsel, the evidence was accepted as evidence for these proceedings, pursuant to section 71(2)(c) of the *Residential Tenancy Act (Act)*.

On February 19, 2021 the Tenant submitted one additional page to the Residential Tenancy Branch. Legal Counsel for the Tenant stated that this document was sent to Legal Counsel for the Landlord, via fax. Legal Counsel for the Landlord stated that this document was not received. As the Landlord does not acknowledge receiving this single document and the Tenant provided no evidence to establish service, it was not accepted as evidence for these proceedings. I note that this single document is not particularly relevant to the issues in dispute at these proceedings and that the Tenant was at liberty to testify regarding the content of the document.

On February 22, 2021 the Landlord submitted evidence to the Residential Tenancy Branch. Legal Counsel for the Landlord stated that this evidence was served to the Tenant, via registered mail, on February 22, 2021 and by email on February 25, 2021. The Tenant acknowledged receiving the evidence that was sent by email and it was accepted as evidence for these proceedings, pursuant to section 71(2)(c) of the *Act*.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant

submissions. The participants with the initials AK, TK, and KN each affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Preliminary Matter #1

The Landlord and the Tenant agree that the Tenant with the initials AK and the Landlord entered into a written tenancy agreement. These parties agree that the company named as an Applicant on the Application for Dispute Resolution is not named in their written tenancy agreement.

With the consent of both parties, I amend this Application for Dispute Resolution by removing the name of the company named as an Applicant on the Application for Dispute Resolution, as that company is not a party to the tenancy agreement. Any Order granted as a result of these proceedings will not name that company.

Preliminary Matter #2

At the hearing Legal Counsel for the Tenant stated that the Tenant is not seeking to interrupt the tenancy of the Sub-tenant who is currently subleasing the rental unit. Rather, the Tenant is seeking an Order of Possession that requires the Landlord to provide the Tenant with possession of the rental unit after the end of the subtenancy.

Legal Counsel for the Sub-tenant applied to have the Sub-tenant named as a party to these proceedings.

Legal Counsel for the Tenant opposed the application to have the Sub-tenant named as a party to these proceedings. She argued that these proceedings do not affect the sublease between the Tenant and the Sub-tenant and, as such, the Sub-tenant should not be included as a party to these proceedings.

Legal Counsel for the Landlord and Legal Counsel for the Sub-tenant argued that these proceedings have a direct affect on the Sub-tenant and, as such, the Sub-tenant should be included as a party to these proceedings.

Rule 7.13 of the Residential Tenancy Branch Rules of Procedure authorizes me to determine whether another party should be named as a party to these proceedings. I find that the Sub-tenant will not be materially affected by the outcome of these proceedings. In the event I grant an Order requiring the Landlord to give possession of

the unit to the Tenant, that will have no material effect on the Sub-tenant, as she will not be named on that Order and it will not require the Sub-tenant to vacate the unit.

In the event the Tenant wishes to pursue an Order that requires the Sub-tenant to vacate the unit after the end of the sublease, the Tenant retains the right to file another Application for Dispute Resolution which names the Sub-tenant, rather than the Landlord.

As the Sub-tenant was not added as a party to these proceedings, she was not permitted to remain at the hearing. The Landlord was advised that the Sub-tenant could be called as a witness in the event the Landlord believed she was required as a witness.

Preliminary Matter #3

During the hearing Legal Counsel for the Landlord asked that the Sub-tenant be called as a witness to address some issues related specifically to the sublease agreements.

The Landlord was advised that in the interests of efficiency, I would delay calling this witness until closer to the end of the hearing, so the witness could address all issues that may arise during the hearing, rather than calling her to address specific issues as they arise. The Landlord was advised that this witness would be called at the end of the hearing if requested by the Landlord at that time.

The Landlord did not ask that the Sub-tenant be called as a witness at the conclusion of this hearing. The Sub-tenant did not, therefore, provide testimony at these proceedings.

I note that this hearing ran well past the time scheduled for this hearing and needed to be either adjourned or concluded quickly to allow me to attend my next scheduled hearing. In spite of the abrupt end to the hearing, the Landlord was given the opportunity to raise any other issues. The Landlord did not request an adjournment to provide the Landlord with the opportunity to call the Sub-tenant as a witness.

Preliminary Matter #4

On the Application for Dispute Resolution the Tenant declared, in part, that the Landlord has “deactivated the Tenant's key devices to the floor, amenities, parkade and common area”. I find that it is readily apparent from this information that the Tenant is

seeking an Order requiring the Landlord to provide the Tenant with access to the rental unit. As this appears to be very closely related to the Tenant's application for an Order of Possession, that matter will be considered at these proceedings.

Preliminary Matter #5

On the Application for Dispute Resolution the Tenant declared, in part, that the Tenant has personal belongings in the rental unit and that she requires immediate access to the property, presumably for the purposes of recovering those personal items.

In the event the Tenant has personal items in the rental unit and the Sub-tenant is refusing to return them to the Tenant (Sub-landlord), the Tenant has the right to file an Application for Dispute Resolution that names the Sub-tenant, in which the Tenant (Sub-landlord) requests an Order requiring the Sub-tenant to return personal property.

As the Landlord has no authority over any dispute between the Tenant and the Sub-Tenant, I find that this is an issue that should not be considered at these proceedings.

Preliminary Matter #6

On the Application for Dispute Resolution the Tenant requested, in part, that the tenancy agreement be "extended on a month-to-month basis". It appears that in addition to the application for an Order of Possession, the Tenant is seeking an Order declaring that the tenancy continue on a month-to-month basis after the fixed term of this tenancy ends.

I note that the written tenancy agreement that was submitted in evidence by both parties clearly declares that the tenancy will continue on a month-to-month basis after the end of the fixed term of the tenancy.

Section 62(4)(c) of the *Residential Tenancy Act (Act)* authorizes me to dismiss all or part of an application for dispute resolution if the application or part is frivolous or an abuse of the dispute resolution process. The term "frivolous" has been defined as "lacking a legal basis or legal merit; a matter that has little prospect of success; not serious, not reasonably purposeful".

Given that the written tenancy agreement clearly declares that the tenancy continues on a month-to-month basis after the end of the fixed term of the tenancy, I find that there is no need for me to consider the Tenant's application to "extend" the tenancy on a month-

to-month basis. I find that this portion of application is frivolous, as it is unnecessary and has no reasonable purpose, given that the tenancy agreement clearly defines what occurs at the end of the fixed term of the tenancy. I therefore decline, pursuant to section 62(4)(c) of the Act, to consider the application to “extend” the tenancy on a month-to-month basis.

I specifically note that a term in any tenancy agreement which declares that the tenancy will continue on a month-to-month basis after the end of the fixed term of the tenancy or any similar conclusion I would reach at these proceedings, would have no effect on a valid notice to end tenancy served by either the Landlord or the Tenant.

Preliminary Matter #7

As previously stated, this hearing ran well past the time scheduled for this hearing and needed to be either adjourned or concluded quickly to allow me to attend my next scheduled hearing.

The parties engaged in discussions regarding a settlement agreement but were unable to reach mutually agreeable terms to settle all issues, in large part because the Tenant was committed to obtaining an Order of Possession.

At the conclusion of the hearing the parties were advised that I was not inclined to grant the application for an Order of Possession. Legal Counsel for the Tenant requested an adjournment for the purposes of making additional submissions regarding the Order of Possession.

There was insufficient time for the parties to make submissions on the application for an adjournment. The parties were advised that I would consider the request for an adjournment and that I would reconvene this hearing if I concluded that an adjournment was necessary.

For reasons outlined in my analysis, I determined that the Tenant’s application for an Order of Possession was premature and I dismissed it, with leave to reapply.

Given my finding that the application for an Order of Possession was premature, I do not find it necessary to reconvene this hearing as the adjournment is, in my view, highly unlikely to yield a different result.

Issue(s) to be Decided:

Is the Tenant entitled to an Order of Possession?

Is there a need to issue an Order requiring the Landlord to provide the Tenant with access to the rental unit?

Background and Evidence:

The Landlord and the Tenant agree that:

- This tenancy began on April 15, 2019;
- The Landlord and the Tenant signed a fixed term tenancy agreement, the fixed term of which began on April 15, 2019 and ends on April 30, 2021;
- The Tenant agreed to pay rent of \$8,800.00 by the first day of each month;
- On November 01, 2019 the Agent for the Landlord signed a document that gave the Tenant written permission to sub-let the rental unit to the Sub-tenant (although the Landlord disputes the validity of that document);
- The Tenant subleased the unit to the Sub-tenant;
- The Sub-tenant is currently occupying the rental unit;
- The Landlord has served the Tenant with a One Month Notice to End Tenancy for Cause, a copy of which has been submitted in evidence; and
- The Tenant's application to cancel the One Month Notice to End Tenancy for Cause is the subject of an upcoming dispute resolution proceeding, scheduled to be heard in April of 2021.

The One Month Notice to End Tenancy for Cause that was submitted in evidence by the Tenant declares that the Landlord wishes to end the tenancy because the Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to, jeopardize the lawful interest of the landlord or another occupant and because the Tenant has assigned or sublet the rental unit without the written consent of the Landlord.

Legal Counsel for the Tenant stated that:

- The fob that provides the Tenant with access to the residential complex has been deactivated;
- The fob that provides the Tenant with access to the floor of the rental unit has been deactivated;
- The lock to the rental unit has been changed;
- The concierge is refusing to provide the Tenant with access to the complex and/or floor; and
- The Tenant needs access to the complex/floor/unit for the purposes of posting notices for the Sub-tenant and to conduct inspections.

Legal Counsel for the Landlord stated that:

- The Strata Corporation deactivated the fobs that provided the Tenant with access to the complex/floor when the Sub-tenant moved into the rental unit, which is standard procedure once a new occupant moves into the unit;
- The Landlord did not direct the Strata Corporation to deactivate the Tenant's access fob;
- The Tenant does not need a fob to access the complex/floor, as that access can be provided by the full-time concierge;
- The Landlord has never directed the concierge to refuse access to the Tenant;
- There is video evidence that shows the Tenant has recently accessed the complex/floor;
- Within the next 5 business days the Landlord will provide the Tenant with a letter that directs the concierge to provide the Tenant with access to the complex/floor;
- The Landlord does not hold keys to the rental unit; and
- The Landlord has not changed the locks to the rental unit.

The Occupant stated that the concierge recently provided him with access to the floor of the rental unit for the purpose of posting a notice, but the concierge has subsequently denied access to the floor.

Analysis:

On the basis of the undisputed evidence, I find that the Tenant and the Landlord entered into a fixed term tenancy agreement, the fixed term of which ends on April 30, 2021.

On the basis of the undisputed evidence, I find that the Tenant has been served with a One Month Notice to End Tenancy for Cause; that the Tenant filed an application to dispute this Notice to End Tenancy; and that a hearing has been scheduled to consider that application. Residential Tenancy Branch records show that the Tenant's application for cancel the One Month Notice to End Tenancy for Cause is scheduled to be heard on April 16, 2021.

I find that the tenancy between the Landlord and the Tenant will continue until one party ends the tenancy in accordance with the *Act*. Whether this tenancy ends in accordance with the aforementioned One Month Notice to End Tenancy for Cause is a matter to be determined at the hearing scheduled for April 16, 2021.

On the basis of the undisputed evidence, I find that the rental unit is currently being occupied by a third party, which the Tenant alleges has been legally sublet to the Sub-tenant.

In the Application for Dispute Resolution the Tenant alleges, in part, that the Landlord provided the Tenant with a letter providing the Tenant authority to sublet the unit. Whether the Tenant had written authority to sublet is an issue that will be determined when the One Month Notice to End Tenancy for Cause is considered on April 16, 2021 and is not, in my view, a matter that needs to be considered during these proceedings.

Section 54 of the *Residential Tenancy Act (Act)* permits me to grant an Order of Possession to a Tenant. In these circumstances, the Tenant is seeking an Order that grants her possession of the rental unit after the end of the sublease. I find this application for an Order of Possession is premature. I therefore dismiss the application for an Order of Possession, with leave to reapply.

In the event the One Month Notice to End Tenancy for Cause is set aside at the hearing on April 16, 2021 and there is evidence that the Landlord is attempting to end the original tenancy unlawfully, the Tenant retains the right request an Order of Possession by filing another Application for Dispute Resolution that names the Landlord. I find it would be premature for me to consider whether an Order of Possession should be granted to the Tenant until the validity of the One Month Notice to End Tenancy for Cause has been determined.

In the event there is evidence that the sub-Tenant intends to prevent the Tenant (Sub-landlord) from moving back into the rental unit after the sublease ends, the Tenant (Sub-landlord) retains the right request an Order of Possession by filing another Application for Dispute Resolution that names the Sub-tenant.

Section 31(1) of the *Act* stipulates that a landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property (emphasis added). I find that the Tenant has submitted insufficient evidence to establish that the Landlord has breached section 31(1) of the *Act*.

On the basis of the undisputed evidence, I find that the fob that previously provided the Tenant with access to the residential complex and the floor of the rental unit was deactivated by the Strata Corporation when the Sub-tenant moved into the rental unit. I

find that this is not a breach of section 31(1) of the *Act*, because there is a 24-hour on-site concierge to provide the Tenant with access to the complex/floor.

I find that there is insufficient evidence to establish that the Landlord directed the concierge to deny the Landlord with access to the complex/floor. In reaching this conclusion, I was heavily influenced by the Landlord's submission that the Landlord did not provide such direction to the concierge and by the absence of any evidence to refute that submission.

On the basis of the undisputed evidence, I find that the concierge recently provided the Tenant with access to the floor of the rental unit and that the concierge subsequently denied the Tenant access to the floor. In the absence of evidence to show that access was denied as a result of the Landlord's actions, I find it entirely possible that access was denied due to a misunderstanding or due to a decision of the Strata Council.

At the hearing Legal Counsel for the Landlord agreed to provide the Tenant with a letter that directs the concierge to provide the Tenant with access to the complex/floor. I hereby Order the Landlord to comply with that agreement.

Given that the Landlord has agreed to provide the Tenant with a letter that directs the concierge to provide the Tenant with access to the complex/floor, I find that the Landlord is taking reasonable steps to ensure the Tenant is provided with access to the complex/floor. In the event the concierge continues to refuse to provide the Tenant with access to the complex/floor for the purposes of posting notices on the door of the rental unit and/or conducting lawful inspections of the rental unit, I Order the Landlord to take whatever steps are reasonable to ensure the Strata Corporation provides the Tenant with access to the complex/floor for these lawful purposes.

On the basis of the undisputed evidence, I find that that the Tenant is unable to access the rental unit with her key.

Section 31(1.1) stipulates that a landlord must not change locks or other means of access to a rental unit unless the tenant agrees to the change, and the landlord provides the tenant with new keys or other means of access to the rental unit.

On the basis of the Landlord's submission and the absence of any evidence to the contrary, I find that the Landlord does not possess a key to the rental unit and that the Landlord did not change the locks to the rental unit. I therefore find there is insufficient

evidence to establish that the Landlord breached section 31(1.1) of the *Act* by changing the locks.

Section 31(3) of the *Act* stipulates that a tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change. Regardless of why the Tenant is currently unable to access the rental unit with a key, I find that for security reasons she, as the Sub-landlord, has the right to possess a key to the unit.

I therefore grant the Tenant authority, pursuant to section 31(3) of the *Act*, to change the lock to the main door of the rental unit. Prior to changing the lock, the Tenant must provide the Sub-tenant with written notice of the change in accordance with sections 29(1)(a) or 29(1)(b) of the *Act*. The Tenant must provide the Sub-Tenant with a key to the new lock as soon as is practicable. The Tenant must also provide the Landlord with a key to the new lock as soon as is practicable, unless the Landlord clearly indicates they do not wish to receive a copy of the key(s).

As the Tenant has failed to establish an urgent need for an Order of Possession and the Tenant has failed to establish the Landlord breached the *Act* in regard to access to the unit, I dismiss the Tenant's application to recover the fee paid to file this Application.

Conclusion:

I order the Landlord to comply with the agreement to provide the Tenant with a letter that directs the concierge to provide the Tenant with access to the complex/floor.

I order the Landlord to take whatever steps are reasonable to ensure the Strata Corporation provides the Tenant with access to the complex/floor for the purposes of posting notices and conducting lawful inspections.

I grant the Tenant authority, pursuant to section 31(3) of the *Act*, to change the lock to the main door of the rental unit.

Prior to changing the lock, I order the Tenant to provide the Sub-tenant with written notice of the change, in accordance with sections 29(1)(a) or 29(1)(b) of the *Act*.

I order the Tenant to provide the Sub-tenant with a key to the new lock as soon as is practicable.

I order the Tenant to provide the Landlord with a key to the new lock as soon as is practicable, unless the Landlord clearly indicates they do not wish to receive a copy of the key.

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: March 04, 2021

Residential Tenancy Branch