



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COASTSIDE MANAGEMENT
LIMITED and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPM, FFL

Introduction

On January 4, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting an order of possession for the rental unit based on a Mutual Agreement to End a Tenancy.

The matter was set for a conference call hearing on this date. The Landlords agent and the Tenant appeared at the hearing. The Tenant was assisted by an advocate. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Is the Landlord entitled to an order of possession for the rental unit based on a mutual agreement to end the tenancy?

Background and Evidence

The Landlord and Tenant testified that the tenancy began back in 2013 and is on a month to month basis. Rent of \$570.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$225.00.

The Landlord is seeking an order of possession for the rental unit based on a mutual agreement to end the tenancy that was signed by the Landlord and Tenant on May 30,

2018. The mutual agreement indicates the tenancy will end on September 30, 2018. The Landlord provided a copy of the mutual agreement to end tenancy.

The Landlord submitted that back in 2018 the Tenant was interfering with repairs to the rental property, so the Landlord issued a One Month Notice to End Tenancy for Cause. The Landlord withdrew the One Month Notice based on an agreement that the parties would enter into a mutual agreement to end tenancy which would provide the Tenant with time to find another place to live.

The Landlord testified that she made a mistake by giving the Tenant more time and extending the end date of the tenancy. The Landlord submitted that during this extension of time the Tenant turned down an opportunity for a new place to live. The Landlord testified that she has stayed in regular contact with the Tenants advocate throughout this time.

The Landlord wants to end the tenancy based on the mutual agreement to end tenancy dated May 30, 2018. The Landlord testified that the rent has been paid every month since May 2018.

In reply, the Tenant provided testimony confirming that she signed the mutual agreement to end tenancy. The Tenant feels that she should not have to move out of the unit based on the mutual agreement. She testified that there has been virtually no contact with the Landlord regarding the eviction since May 2018. She testified that she was emotionally distraught when the mutual agreement was signed as she had just lost her husband. She testified that she meets regularly with a mental health and addictions worker and has seen a psychologist.

The Tenant's advocate submitted that the Tenant is on a BC housing waitlist. She testified that the Tenant did not turn down an opportunity for housing.

Analysis

Section 55(2) of the Act states that a Landlord may request an order of possession for a rental unit when the Landlord and Tenant have agreed in writing that the tenancy is ended.

Based on the above, the testimony and evidence before me, and on a balance of probabilities, I find as follows:

I find that the Landlord and Tenant entered into a mutual agreement to end the tenancy; however, I find that the Landlord extended the tenancy and has permitted the Tenant to continue living in the rental unit for 2.5 years beyond the effective date of the mutual agreement.

While I acknowledge that the Landlord was being considerate to the Tenant, I find that the Landlord took no action to enforce the mutual agreement for 2.5 years. I find that the delay in enforcing the notice, makes the notice invalid. I find it is not reasonable for a Landlord to permit a tenancy continue for this long while holding on to an agreement that the parties were ending the tenancy.

I find that the mutual agreement to end tenancy is of no force or effect and is set aside.

The Landlord's application for an order of possession for the rental unit based on the Mutual Agreement to End a Tenancy dated May 30, 2018 is dismissed.

The tenancy will continue until ended in accordance with the Act.

If the Landlord still has concerns about the Tenant's recent behaviour on the residential property, the Landlord is at liberty to issue a notice to end tenancy.

Conclusion

The Landlord continued to accept the monthly rent and did not pursue enforcement of a mutual agreement to end tenancy for 2.5 years.

I find that the tenancy has been reinstated and the mutual agreement to end tenancy is of no force or effect and is set aside.

The Landlord's 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: March 30, 2021