



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 as a result of an Application for Dispute Resolution (application) by the tenants seeking remedy under the *Residential Tenancy Act* (Act). The tenants applied for an order of possession under the Act and to recover the cost of the filing fee.

The tenants, the landlord, and the son of the landlord, WW (agent) attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the landlord confirmed being served with the tenants' evidence and did not serve any evidence on the tenants, I find the landlord was sufficiently served in accordance with the Act as the landlord confirmed having reviewed the documentary evidence from the tenants.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance

Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

The rental unit address was also corrected during the hearing pursuant to section 64(3)(c) of the Act.

Issues to be Decided

- Are the tenants entitled to an order of possession for the rental unit under the Act?
- Are the tenants entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenants each signed their own agreement for the same rental unit and planned to be tenants in common. A security deposit was paid.

Tenant HQ admitted during the hearing that on May 31, 2021 they went to the rental unit and stated “we don’t want to rent” due to repairs that the tenants felt were needed to flooring, holes in the wall and a kitchen fan not working. Based on the refusal of the tenants to accept the key and stating “we don’t want to rent” the landlord ended up renting to a different family who moved in July 1, 2021.

The landlord stated that the tenants did not pay the rent for June 2021.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

Firstly, section 54(1) of the Act states:

Order of possession for the tenant

54(1) A tenant who has entered into a tenancy agreement with a landlord may request an order of possession of the rental unit by making an application for dispute resolution.

(2) The director may grant an order of possession to a tenant under this section before or after the date on which the tenant is entitled to occupy the rental unit under the tenancy agreement, and the order is effective on the date specified by the director.

(3) The date specified under subsection (2) may not be earlier than the date the tenant is entitled to occupy the rental unit.

Based on the above; however, I find the landlord cannot force the tenants to take possession of the rental unit and in the matter before me I find the tenants refused to take possession by stating “we don’t want to rent” unless specific repairs were made. The tenants have no authority under the Act to hold a rental unit “hostage” by not paying rent and not accepting the key or taking possession until X, Y or Z have been completed. The tenants should have paid the rent, accepted the rental unit keys and written to the landlord requesting repairs and failing that, applied for dispute resolution regarding any repairs they felt were not completed within a reasonable period. Instead, I find the tenants failed to accept possession of the rental unit and as of the date of the hearing, now want possession of the rental unit, which is too late as the landlord has already rented the rental unit to a different family who moved in July 1, 2021.

Based on the evidence before me, I find the tenants have failed to meet the burden of proof to support that the landlord breached the Act and that the tenants are entitled to an order of possession as the landlord cannot force a tenant to take possession and in this matter, I find the tenants refused possession and backed out of the tenancy agreement. Therefore, I dismiss the tenants’ application due to insufficient evidence, without leave to reapply.

The filing fee is not granted as the application has no merit.

Conclusion

The tenant’s application is dismissed in its entirety.

The filing fee is not granted.

This decision will be emailed to both parties at the email addresses confirmed during the hearing.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 9, 2021

Residential Tenancy Branch