



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding J.P.Dickenson
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPT, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The applicants applied for:

- an order of possession, under section 54; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. Applicant AS was represented by BS. The respondent was represented by agent JY and assisted by counsel DM. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Preliminary Issue – Service

The notice of hearing is dated July 20, 2021. The respondent's counsel confirmed receipt of the notice of hearing and evidence (the materials) by registered mail on July 23, 2021. I accept the applicants served the materials in accordance with section 89 of the Act.

BS confirmed receipt of the respondent's evidence on August 02, 2021. I accept the respondent served the evidence in accordance with section 89 of the Act.

The respondent's counsel affirmed he served a second evidence package by email on August 06, 2021.

Rule of Procedure 10.4 states:

Copies of all of the respondent's available evidence must be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence must be served on the other party in a single complete package.

As this was an expedited hearing, the second evidence package served on August 06, 2021 is excluded, per Rule of Procedure 10.4.

Issues to be Decided

Are the applicants entitled to:

1. an order of possession?
2. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the applicants' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the applicants' obligation to present the evidence to substantiate the application.

BS affirmed he met JY on June 17, 2021, signed the tenancy agreement, paid the security deposit in the amount of \$925.00 and July 2021 rent in the amount of \$1,850.00 and received the rental unit's keys. BS stated he was allowed to occupy the rental unit from June 17 to 30, 2021 and only start paying rent on July 01, 2021.

JY confirmed receipt of the security deposit and July 2021 rent and that she gave the rental unit's keys to BS on June 17, 2021. JY testified the tenant could have access to the rental unit on June 17, 2021 to move his belongings, but the tenancy was only starting on July 01, 2021. JY said she returned the security deposit to BS.

BS submitted into evidence a tenancy agreement. It indicates the landlord is J.P.Dikenson (printed) and "c/o JY" (handwritten), the tenants are AS (printed) and BS (handwritten), the tenancy starts on June 17, 2021 and ends on June 30, 2023, the tenant is required to pay a security deposit of \$925.00 on June 17, 2021 (handwritten), the is no addendum. It is signed by JY, AS and BS on June 17, 2021.

JY submitted into evidence a different tenancy agreement without handwritten information and not signed. It indicates the landlord is J.P.Dikenson, the tenant is AS, the tenancy starts on July 01, 2021 and ends on June 30, 2022, the tenant is required to pay a security deposit of \$925.00 in June 2021, there is an addendum containing one page and 12 terms. JY affirmed she sent the tenancy agreement to BS on June 17, 2021 by email: "Attached is the lease agreement and form K. Please have your father to sign." JY stated AS did not sign the tenancy agreement and she only received the tenancy agreement submitted by BS when she received the materials.

JY testified on June 28, 2021 she changed the rental unit's locks. JY emailed BS on June 28:

I hereby inform you that the owner of the above mentioned unit, J.P. Dickenson, has cancelled the agreement to rent to you due to the circumstance of the original accepted terms being changed from the beginning. The unit door lock is changed now. The fob will be cancelled by the strata management. The owner will e transfer your deposit and July rent tomorrow providing that you return the fob. You can leave the fob with the concierge at [redacted for privacy], your current address, by noon tomorrow, then the full amount of the security deposit will be returned to you. If not, \$100 will be deducted from the deposit money. Your internet [redacted for privacy], box will be left at the concierge, [redacted for privacy]for you to pick up tomorrow.

JY and the respondent's counsel said the rental unit was re-rented on July 15, 2021 and the new tenant has been occupying the unit since then. JY submitted into evidence a tenancy agreement for the same unit signed on July 15, 2021. It indicates the tenancy started on July 15, 2021. JY submitted into evidence a form K signed on July 15, 2021 and a receipt for the security deposit and rent from July 15 to August 14, 2021.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

The two written tenancy agreements submitted into evidence are substantially different, as they indicate different tenants, tenancy start and end dates, and addendum.

Furthermore, one of the copies is signed and the other is not. Thus, I find I can not rely on the written tenancy agreements.

Section 01 of the Act defines tenancy agreement as:

means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

I accept the undisputed testimony that on June 17, 2021 the respondent received the security deposit and rent payment from BS and gave the rental unit's keys to BS.

Based on the June 17, 2021 email, the two different tenancy agreements listing AS as the tenant, and the undisputed testimony above referenced, I find the respondent entered into an oral tenancy agreement with AS on June 17, 2021.

Section 54 of the Act states:

- (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 JY's undisputed testimony, the June 28, 2021 email and the July 15, 2021 tenancy agreement and form K, I find that the respondent refused to give the applicants access to the rental unit on June 28, 2021, the rental unit was re-rented on July 15, 2021 and another tenant has been occupying the rental unit since then.

Residential Tenancy Branch Policy Guideline 51:

Under section 54 of the RTA and section 47 of MHPTA, a tenant may apply for an order of possession for the rental unit or home site if they have a tenancy agreement with the landlord. These types of applications may arise when a tenant and landlord have signed a tenancy agreement and the landlord refuses to give the tenant access to the rental unit, or the landlord has locked the tenant out of their rental unit.

Tenants should be aware that the director may not be able to grant an order of possession to a tenant in circumstances where another renter is occupying the

rental unit; however, the tenant may file a separate application for monetary compensation from the landlord for any damage or loss they may have suffered.

(emphasis added)

As another tenant has been occupying the rental unit since July 15, 2021, I find the applicants are not entitled to an order of possession. The applicants are at liberty to file an application for monetary compensation.

The applicants applied for an order of possession on July 01, 2021 and the rental unit was re-rented on July 15, 2021. The applicants did not obtain an order of possession because the landlord re-rented the unit. The applicants are entitled to recover the filing fee.

Conclusion

I dismiss the application for an order of possession without leave to reapply.

Pursuant to section 72(1) of the Act, I grant a monetary order to the applicants in the amount of \$100.00. The applicants are provided with this order in the above terms and the respondent must be served with this order. Should the respondent fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: August 11, 2021

Residential Tenancy Branch