



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT

Introduction

On July 9, 2021, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting an Order of Possession for the rental unit. The matter was set for an expedited participatory hearing via conference call.

The Landlord, the Tenant and the Tenant’s Advocate attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence and have had a chance to review such evidence. As a result, I find that the evidence that I have before me is admissible for this hearing.

Issues to be Decided

Should the Tenant receive an Order of Possession, in accordance with section 54 of the Act?

Background and Evidence

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

The Tenant stated that there was a written Tenancy Agreement between herself and the Landlord; however, did not produce it as evidence.

The Landlord stated that there was not a written Tenancy Agreement and that he began renting the unit to the Tenant in November 2020 on a month-to-month basis. Both parties agreed that the monthly rent was \$725.00.

The Tenant testified that she verbally agreed to move out of the rental unit at the same time her boyfriend was being evicted from his rental unit, which was in the same residential property; on June 30, 2021. The Tenant stated that there was no written mutual agreement to end the tenancy between her and the Landlord and that the Landlord had not served any Notice to End Tenancy to the Tenant.

The Tenant acknowledged that she did not pay rent for July 1, 2021; however, was still living in the rental unit on July 5, 2021 when the Landlord changed the locks.

The Tenant advised that she does not currently have a place to live and has requested an Order of Possession for the rental unit or compensation for her losses if an Order of Possession is not possible.

The Landlord testified that he did not have a written mutual agreement to end the tenancy with the Tenant, only a verbal agreement that she would move out on June 30, 2021. The Landlord acknowledged that he changed the locks to the rental unit on July 5, 2021 and stored the Tenant's belongings in the basement of the residential property.

The Landlord testified that he had arranged for a new tenant on July 1, 2021 based on the Tenant's verbal agreement that she was going to move out on June 30, 2021. He stated that the rental unit had a large amount of garbage in it and that it took a huge effort to clean the unit to allow for the new tenant to move-in.

The Landlord stated he took the opportunity to change the lock on the rental unit as it meant the Tenant and her boyfriend would no longer have a place to stay in the residential property as originally agreed. The Landlord said that he took this action as a means to improve the safety for the other tenants in the residential property.

The Landlord testified that there were no vacancies in the residential property and confirmed that a new tenant was occupying the rental unit in question.

Analysis

Under section 54 of the Act, a tenant may apply for an order of possession for the rental unit 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 arbitrator 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.

If a tenant applies for an order of possession, they must be able to prove that a tenancy agreement exists between the tenant and landlord.

In this case, based on both parties' testimony, I find that a month-to-month tenancy was created in November 2020 when the Tenant moved into the rental unit and the Landlord collected both a security deposit and monthly rent.

Section 44(1)(c) states that a tenancy may end if the landlord and tenant agree in writing to end the tenancy. In this case, based on the testimony and evidence of both parties, I find that the tenancy was not ended in accordance with the Act. Specifically, that the Landlord and Tenant did not agree to end the tenancy in writing.

Although the Tenant had not paid rent by July 5, 2021, I find that the tenancy was ongoing. I find that the Landlord had an option, pursuant to section 46 of the Act, to respond to the non-payment of rent; however, failed to do so.

I find that the landlord, instead of issuing a Notice to End Tenancy for Unpaid Rent, chose to lock the tenant out of their rental unit. In doing so, I find the Landlord breached section 30 and 31 of the Act and forced the Tenant from being able to access their rental unit or their possessions.

I accept the Tenant's testimony that they have been homeless since July 5, 2021 as a result of the Landlord changing the locks and blocking the Tenant's access to the rental unit. I find the actions of the Landlord are an egregious breach of the tenancy and of his responsibilities as a Landlord.

I accept the Landlord's undisputed testimony that there are no other vacant rental units in the residential property. As the rental unit is currently occupied by another renter, I find I cannot issue an Order of Possession for the rental unit.

Section 62(3) of the Act authorizes an arbitrator to make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement, and an order that this Act applies.

In this case, I have found that the Landlord breached sections 30 and 31 of the Act and in doing so, has left the Tenant without secure housing. As I cannot issue an Order of

Possession to the Tenant to remedy her homelessness, I enact my authority under section 62(3) of the Act for the following:

1. I order the Landlord to provide the Tenant with the option of moving into the next vacant rental unit within the residential property. To clarify, as of the date of this Decision, if a rental unit is available or becomes vacant within the residential property, the Landlord will offer that rental unit to the Tenant under the same terms and monthly rent as established with the Tenant in November 2020.

I remind the Landlord of section 13(1) of the Act that directs a landlord to prepare a written tenancy agreement for every tenancy that is established.

The Tenant, in her Application, requested an Order of Possession. An Order of Possession was not granted due to another renter 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.

Conclusion

I have found that the Landlord has breached several sections of the Act. I am unable to issue an Order of Possession to the Tenant as there is another renter in the rental unit.

Under section 62(3) of the Act, I have ordered the Landlord to provide the Tenant the option of moving into the next vacant rental unit within the residential property.

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 18, 2021

Residential Tenancy Branch