



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MENKIS CONSTRUCTION LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPT, FFT

Introduction

The tenant applied for an order of possession pursuant to section 54 of the *Residential Tenancy Act* ("Act"). In addition, he applied to recover the cost of the filing fee pursuant to section 72 of the Act.

Both parties attended the hearing on September 28, 2021. No service issues were raised and Rule 6.11 of the *Rules of Procedure* was explained.

Issue

Is the tenant entitled to an order of possession?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issue of this dispute, and to explain the decision, is reproduced below.

The tenant testified that the tenancy began in September of 2016. The tenancy ended when the locks were changed on August 23, 2021. Monthly rent was \$2,400.00 and the tenant paid a security deposit of \$1,200.00. There was no written tenancy agreement submitted into evidence.

The tenant testified that he worked for the landlord (a company billing itself as a construction company) but was terminated from their employment on July 21, 2021. He then went on a family vacation and returned on August 18. He went out for the day on August 23 and when he returned home the locks had been changed. The tenant explained that all of his family's personal possessions and property are still in the rental unit and that he would need a couple of days to get them out.

The tenant also has various personal property and tools stored in various places in the multi-unit residential property, and he has a vehicle or two parked in secured parking.

As for the tenancy itself, he stated that he was never given any notice (to end the tenancy) by the landlord, nor did he ever give notice. That having been said, the tenant explained that he has no intention of returning to, and living in, the rental unit.

The landlord's witnesses testified that the tenant had been hired as the property manager. The tenant apparently disappeared, and the landlord was unsure of his whereabouts. They attended to the rental unit and, contrary to what the tenant said, found it to be empty, so they changed the locks. The landlord confirmed that much of the tenant's personal belongings or property had been left behind, but that this has since been put all in one place. They explained that other locks had been changed for security purposes.

The landlord's witnesses confirmed that the rental unit was empty as of August 24, that there is no longer a tenancy between the parties, and that the tenant is no longer a current tenant.

Both parties submitted various evidence regarding this matter, including various emails and photographs.

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 their case is on the person making the claim.

The tenant applied for an order of possession under [section 54](#) of the Act which 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.

What is clear from the facts is that the tenancy ended on August 23, 2021. From everything the parties have told me, the tenant has effectively vacated the rental unit and has no intention of returning. The tenant has not paid rent for August or September, which further supports a finding that the tenancy has ended. And the landlord's position is that the tenant is no longer a tenant and that there is no longer a tenancy. What is more, there is now another tenant occupying the rental unit. There is, I note, a discrepancy between the tenant's testimony about the rental unit being full of his property and the landlord's testimony about it being empty (or, empty of the tenant's property given that someone else now lives there).

In summary, there is no tenancy between the parties and as such I am not in a position to grant an order of possession of the rental unit. An order of possession may only be granted to a tenant where that tenant has a legal right to a rental unit, which he does not. Accordingly, it is my finding that the tenant has not met the onus of proving that he is entitled to an order of possession.

That said, the landlord is required under [section 65\(1\)\(e\)](#) of the Act to permit and allow the tenant to retrieve all of his personal property, including any vehicles. **The landlord is therefore ordered, pursuant to section 65(1) of the Act, to grant the tenant access to the residential property in order to retrieve the tenant's personal property.** While access may be supervised by the landlord's security staff, the landlord must ensure that the tenant is given sufficient time to carry out the retrieval of his property. This order must be complied with no later than October 10, 2021.

Conclusion

The tenant's application is dismissed without leave to reapply.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: September 28, 2021

Residential Tenancy Branch