Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, FFT

Introduction

The Applicants seek an order for possession for the rental unit pursuant to s. 54 of the *Residential Tenancy Act* (the "*Act*"). They also seek the return of their filing fee.

S.H. and T.H. appeared on their own behalf as Applicants. The Applicants called S.J. as a witness. Q.Q. appeared on her own behalf as the Respondent and was joined by L.W.. The Respondent had the assistance of R.J., who acted as their translator.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

R.J., who appeared as translator for the Respondent, certified that she had knowledge of the Mandarin language and was able to translate English to Mandarin, and vice versa, on behalf of the Respondent.

The Applicants indicate that they served the Notice of Dispute Resolution on the Landlord by way of registered mail sent on January 21, 2022. The Respondent acknowledges receipt of the Notice of Dispute Resolution. I find that the Notice of Dispute Resolution was served in accordance with s. 89 of the *Act*. Pursuant to s. 90, I deem that the Respondent received the Notice of Dispute Resolution on January 26, 2022.

The Applicants further advised that they served their evidence through various emails sent in January 2022. The Respondent denies receipt of the Applicants evidence and says that he only ever received an email that was described as "threatening". S.J., the Applicants' witness, says she saw the Applicant send various emails. Section 89 of the

Act permits service by way of email if it is an approved form of service between the parties beforehand. The Applicants were unable to demonstrate that this was the case.

I would further note that the present application is an expedited hearing for which Rule 10 of the Rules of Procedure apply. Rule 10.2 sets out that the applicant must submit all the evidence they intend to rely upon at the hearing with their initial application. Rule 10.3 requires the applicant to serve all their evidence and the Notice of Dispute Resolution within one day of receiving the Notice of Dispute Resolution from the Residential Tenancy Branch.

I find that the Applicants were unable to demonstrate service of their evidence. They neither followed Rule 10.3 or s. 89. Accordingly, I do not consider the evidence the Applicants provided to the Residential Tenancy Branch as it was not served on the Respondent.

The Respondent did not provide documentary evidence.

Issue(s) to be Decided

1) Are the Applicants entitled to an order for possession for the rental unit?
2) Are the Applicants entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Applicants say that they signed a tenancy agreement with the Respondent on December 23, 2021 for the subject rental unit. They say that rent was to be paid in the amount of $2,400.00 and a security deposit of $1,200.00 was to be paid pursuant to the tenancy agreement. The Applicants were to take occupation of the rental unit on January 1, 2022.

The Respondent confirmed the relevant details of the tenancy. In particular, the Respondent acknowledges signing the tenancy agreement on December 23, 2021, confirmed the address of the subject rental unit, the amount of rent to be paid, the

security deposit to be paid, and that the tenancy agreement provided for occupation of the rental unit on January 1, 2022.

When signing the tenancy agreement, it was the parties understanding that the tenancy would be for a 3-month fixed term. The Respondent says this was because the house was being listed for sale. The Applicants acknowledge that they knew the house was for sale when they signed the tenancy agreement. The Applicants say that their previous home was flooded and that they had been living in temporary accommodations when the tenancy agreement was signed on December 23, 2021.

The Applicants says they received a text message on December 25, 2021 from the Respondent, which stated that the rental unit could not be occupied as the house had been sold and that the new owners would be taking possession on February 10, 2022.

The Applicants say they have observed the rental unit and indicate that it does not appear that it was sold or that it is currently occupied.

The Respondent confirmed that they sent the text message on December 25, 2021 as described by the Applicants. The Respondent admitted at the hearing that though the text message said the property had been sold, this was not true. The Respondent said that they did not receive an offer at that time and used the story of the property being sold as an excuse to avoid the contact.

In the Respondent's telling, when the parties signed the tenancy agreement on December 23, 2021, the Applicants had various forms that needed to be signed by the Respondent for government assistance with their rent. The Respondent's reading of the forms led them to the impression that the Applicant was not treating the tenancy as a short-term rental as some of the documents led the Respondent to believe that the tenancy would be long-term.

The Applicants deny this. They say they knew the house was being sold and that the tenancy would be for 3-months, would revert to month to month afterwards, and that they would be giving 2 months to vacate after it sold if the new buyer wanted vacant possession.

The Applicants indicate that they attempted to pay the security deposit of $1,200.00 on December 29, 2021 as per the requirements set out under the tenancy agreement, but that the payment was refused by the Respondent. The Respondent confirmed that they

refused the acceptance of the security deposit on the basis that they did not wish for the tenancy to proceed.

The Applicants further indicate that they did not take occupation of the rental unit on January 1, 2022. They say they have been staying in short-term accommodations, such as Airbnb, for the past several weeks.

At the hearing, the Respondent disclosed that the residential property has now been sold. The Respondent says that the subject conditions were cleared on February 7, 2022, that the sale closes on April 28, 2022, and that the new buyer will take possession of the residential property on April 29, 2022. No purchase contract was put into evidence.

The residential property is currently vacant.

Analysis

The Applicants seek an order for possession pursuant to their signed tenancy agreement.

Pursuant to s. 54, a tenant who has entered into a tenancy agreement with a landlord may request an order of possession for the rental unit. Policy Guideline 51 provides the following guidance with respect to a tenant's application for an order for possession:

> 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.
>
> 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.

There is little dispute the parties' evidence with respect to this matter. The Respondent acknowledges signing a tenancy agreement with the Applicants on December 23, 2021 and confirmed all the relevant details of the tenancy. I have no difficulty finding that the parties signed an enforceable tenancy agreement given rise to a landlord/tenant relationship and the application of the *Act*. I further find that pursuant to the tenancy agreement, the Applicant Tenants were to take possession of the rental unit on January 1, 2022.

It is further undisputed that the Respondent Landlord told the Applicant Tenants on December 25, 2021 that they would not be allowed to move into the rental unit. The Respondent Landlord admits that the purported sale of the residential property in the December 25, 2021 was false and used as an excuse to try to avoid their obligations under the tenancy agreement.

I find that the Respondent Landlord refused the Applicant Tenants access to the rental unit on January 1, 2022, this despite the Applicant Tenants good faith attempts to fulfill their obligations under the tenancy agreement, in particular the Respondent Landlord's acknowledged refusal to accept the security deposit on December 29, 2021.

The challenge under the present circumstances is that the Respondent Landlord says the property has been sold with the subject condition removal taking place on February 7, 2022, which was the day before the hearing. They say that the sale will close on April 28, 2022 and that the new property owners will be taking possession on April 29, 2022. No evidence was provided by the Respondent Landlord confirming these details.

Policy Guideline 51 is clear that an order for possession for a tenant may not be possible when someone else is occupying the rental unit. Based on the parties' evidence, the rental unit is presently unoccupied.

I find that the Applicant Tenants are entitled to an order for possession. I place little weight in the Respondent Landlord's narrative that the property has been sold. The Respondent Landlord has already admitted to lying in their December 25, 2021 text message and have previously used the purported sale of the property as an excuse to avoid their obligations under the tenancy agreement. Without documentary evidence of the sale, I am unable to make a finding that the property has been sold or that the new owners will take possession on April 29, 2022, as alleged by the Respondent Landlord.

Conclusion

Pursuant to s. 54 of the *Act*, I order that the Applicant Tenants are entitled to an order of possession for the rental unit. The Respondent Landlord shall provide the Applicant Tenants possession of the rental unit within **two (2) days** of receiving the order.

As the Applicant Tenants were successful in their application, I find that they are entitled to the return of their filing fee. Pursuant to s. 72, I order that the Respondent Landlord pay $100.00 to the Applicant Tenants in satisfaction of their filing fee.

It is the Applicant Tenants' responsibility to serve these orders on the Respondent Landlord.

If the Respondent Landlord does not comply with the order for possession, it may be filed by the Applicant Tenants with the Supreme Court of British Columbia and enforced as an order of that Court. If the Respondent Landlord does not comply with the monetary portion of this order, it may be filed with 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: February 09, 2022

Residential Tenancy Branch