Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 2220 Kingsway Limited Partnership and 2220 Kingsway Property Inc. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPL MNRL FFL

Introduction

The landlords seek an order of possession based on an undisputed notice to end tenancy, pursuant to sections 49 and 55 of the *Residential Tenancy Act* ("Act"). In addition, the landlords seek compensation for unpaid rent pursuant to sections 26 and 67 of the Act, and recovery of the application filing fee under section 72 of the Act.

Three representatives for the corporate landlords, and both tenants, attended the hearing. No service issues were raised, the parties were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained.

Preliminary Issue: Request to Remove Named Respondent from Application

The respondent tenant N.S. sought to remove her name from the landlords' application. Both in a written submission and as orally explained by her during the hearing, while the tenant was a named party in the tenancy agreement, she has never resided in the rental unit. Indeed, she has not so much as received a key for the rental unit and only included her name on the tenancy agreement to help her son out (the tenant J.S.). After two years into the tenancy N.S. thought that her son J.S. was doing fine and that she no longer needed to be listed as a co-tenant.

She contacted a landlords' representative in mid-2021 and asked to be removed as a tenant from the tenancy. The landlords requested confirmation from the tenant J.S. regarding this and that updated banking information would need to be provided. The only banking information on file with the landlord was that of N.S.'s bank account information. Tenant J.S. never provided the required updated information and as such the landlords never removed the tenant N.S. from the tenancy agreement.

While the Act does not define "co-tenant," this is a situation involving a mother and son who also happen to be co-tenants for the purposes of the tenancy. *Residential Tenancy Policy Guideline 13 – Rights and Responsibilities of Co-tenants* (version May 2020) describes what a tenant and a co-tenant is as follows, as well as the legal liability that co-tenancy entails:

> A tenant is a person who has entered a tenancy agreement to rent a rental unit or manufactured home site. If there is no written agreement, the person who made an oral agreement with the landlord to rent the rental unit or manufactured home site and pay the rent is the tenant. There may be more than one tenant; co-tenants are two or more tenants who rent the same rental unit or site under the same tenancy agreement. Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. "Jointly and severally" means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement.

A copy of the written tenancy agreement is in evidence. This eight-page contract was initialed by both tenants and the landlords' representative on pages 1 and 7 and was signed by all three parties on page 8 on January 4, 2019. The tenancy agreement clearly named both J.S. and N.S. as the tenants. As such, it is beyond any doubt a fact that J.S. and N.S. are co-tenants for the purposes of this tenancy.

Despite the tenant N.S.'s efforts to have her name removed from the tenancy agreement, this in fact never occurred. There is no evidence before me to find that the landlords agreed to this, which would amount to a material change in the tenancy. Indeed, had the tenant N.S. been removed from the tenancy then a new tenancy agreement would likely have been created at that time. Neither of these events occurred. That the tenant N.S. never obtained a key to the rental unit or otherwise even lived in the rental unit does not remove her liability as a co-tenant.

Therefore, regardless of N.S.'s well-meaning reason for having her name on the tenancy agreement at the start of the tenancy, and irrespective of subsequent efforts to remove her name, it is my conclusion that the respondent tenant N.S. must remain as a named respondent in this application.

Issues

1. Are the landlords entitled to an order of possession?
2. Are the landlords entitled to compensation?
3. Are the landlords entitled to recover the cost of the filing fee?

Background and Evidence

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

The tenancy in this dispute began on January 11, 2019 and monthly rent is $3,070.00. The tenants paid a $1,500.00 security deposit. This deposit is currently held in trust pending the outcome of the landlords' application.

On September 14, 2021 the landlords received an email from the rental unit's owners, who indicated that they intend to move into and occupy the rental unit. A copy of this email is in evidence. A few days later, on September 23, the landlords served a copy of a Two Month Notice to End Tenancy for Unpaid Rent (the "Notice") on the tenants by both posting a copy of the Notice on the door of the rental unit and by emailing a copy to both tenants. A copy of this email is in evidence.

A copy of the Notice was in evidence, and it indicates that the tenancy was being ended so that the landlord (that is, the owners of the rental unit, and not the corporate landlords who act as agents) can occupy the rental unit. The landlords testified that to their knowledge the tenants did not dispute the Notice.

In addition to an order of possession, the landlords seek $12,280.00 in rent arrears for the period of December 2021 to March 2021, inclusive. They also seek rent arrears for any pro rata amount for which the tenant (J.S.) may remain in the rental unit. (This amount cannot be determined at this time, and the landlords may file another application after the tenancy ends.)

The tenant J.S. disputed that he ever received the Notice on the door, and that he only became aware of the Notice a month later after his mother contacted him about it. He explained that he never checks his email, though he acknowledged providing his email at the start of the tenancy to the landlords. This email was also confirmed during the hearing, to which a copy of this decision will be sent.

In respect of the rent, the tenant testified that he “paid rent on time every time” but then later briefly mentioned that he has “withheld it” since December, without elaborating.

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 landlords seek an order of possession based on the Notice not being disputed and because the tenant (I refer to tenant J.S., as N.S. does not in fact occupy the rental unit) refused to vacate the rental unit.

The Notice was issued under section 49(3) of the Act. Namely, that the “landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.” The Notice clearly indicates that this is the reason for it being given.

The Notice was served to both tenants by email on September 21, 2021 and also by being posted on the door of the rental unit. The tenant disputed that he ever received a copy of the Notice on the door, and there is no supporting evidence provided by the landlords establishing that the Notice was served in this manner or, more, importantly, that either tenant ever received it in this manner.

However, the tenants both confirmed their email addresses, and acknowledged that the email addressees were provided to the landlords at the very beginning of the tenancy. It is therefore my finding that the tenants were both served with the notice to end tenancy in compliance with section 43(1) of the *Residential Tenancy Regulation*. That the tenant J.S. only checks his email sporadically does not nullify service of the Notice.

Having reviewed the Notice it is my further finding that it complies with form and content requirements set out in section 52 of the Act.

Section 49(9) of the Act states that if a tenant receives a notice to end tenancy under section 49 of the Act and they have not disputed the Notice within 15 days of receiving the Notice then the tenant is “conclusively presumed to have accepted that the tenancy ends on the effective date of the notice” and “must vacate the rental unit by that date.”

Section 55(2)(b) of the Act permits a landlord to request an order of possession when “a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.”

Taking into careful consideration all of the evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving their request for an order of possession based on the undisputed Notice. Neither tenant disputed the Notice within the required timeline, and the landlords are thus granted an order of possession of the rental unit.

A copy of the order of possession is issued in conjunction with this decision to the landlords. It is the landlords’ responsibility to serve a copy of the order of possession on the tenants.

In respect of the landlords’ claim for rent arrears, while the tenant asserted that he “paid” the rent on time every time, his later comment about withholding the rent since December is consistent with the landlords’ claim for unpaid rent since December. Based on the oral and documentary evidence and testimony of the parties, it is my finding that the landlords have discharged the onus of proving their claim for compensation in the amount of $12,280.00.

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlords succeeded in their application, they are granted $100.00 in compensation to cover the cost of the filing fee. In total, the landlords are awarded $12,380.00 in compensation.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, the landlords are authorized and ordered to retain the tenants’ security deposit of $1,500.00 in partial satisfaction of the above-noted award.

A monetary order in the amount of $10,880.00 is issued in conjunction with this decision, to the landlords. As with the order of possession, the landlords must serve a copy of the monetary order on both tenants.

Conclusion

The application is granted.

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal the decision is limited to review grounds provided under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act,* RSBC 1996, c. 241.

Dated: April 5, 2022

Residential Tenancy Branch