



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPT**

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (“Application”) filed by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) in which she seeks an Order of Possession pursuant to section 54 of the Act.

The Tenant, the Tenant’s roommate (“AN”) and the Landlord attended the participatory hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I informed the parties that the *Residential Tenancy Branch Rules of Procedure* (“RoP”) prohibit persons from recording dispute resolution hearings and, if anyone was recording the hearing, to immediately stop recording the proceeding.

The Tenant stated she served the Notice of Dispute Resolution Proceed (“NDRP”) on the Landlord’s door but could not recall the date of service. The Landlord acknowledged she received the NDRP. I find the NDRP was served on the Landlord in accordance with the provisions of section 89 of the Act.

Preliminary Matter – Service of Tenant’s Evidence on Landlord

The Tenant stated she served her evidence on the Landlord’s door with the NDRP in the absence of a witness. The Landlord stated that, although she received the NDRP, she did not receive any evidence with the NDRP. I find, on a balance of probabilities, that the Landlord was not served with the Tenant’s evidence. As such, I will not admit the Tenant’s evidence for this proceeding.

Preliminary Matter – Removal of Applicant from Application

AN was named as an applicant in the Application. At the outset of the hearing, the Tenant stated AN was her roommate and was never added as a tenant to the tenancy agreement. The Landlord confirmed the only tenant named in the tenancy agreement was the Tenant.

Rule 4.2 of the RoP states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

Based on the foregoing, I find AN was not a tenant under tenancy agreement and was never added as a tenant to the tenancy agreement. As such, pursuant to Rules 4.2 of the RoP, I order AN be removed as an applicant from the Application. Notwithstanding I have removed AN as an application, she may nevertheless attend the hearing as a witness and, if required, provide affirmed testimony.

Issue to be Decided

- Is the Tenant entitled to an Order of Possession for the rental unit?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The parties agreed the tenancy agreement between them (“Original Tenancy Agreement”) provided the tenancy commenced on October 19, 2021, as a month-to-month tenancy, with rent of \$,450.00 payable on the 1st day of each month. The Tenant

was to pay a security deposit of \$725.00. The Landlord acknowledged she received the security deposit from the Tenant and that she is holding it in trust for the Tenant.

The Tenant stated that she was served with a One Month Notice for Cause on July 1, 2022 ("1 Month Notice") but the Tenant did not submit a copy of the 1 Month Notice into evidence. The Landlord stated the Tenant or someone was smoking in the rental unit in contravention of the terms of the Original Tenancy Agreement. The Landlord also stated the Tenant has violated the Original Tenancy Agreement by assigning or subletting the rental unit to a third party. The Tenant denied that she had assigned or sublet the rental unit and stated she occupied the rental unit during the entire tenancy. The Tenant stated AN moved into the rental unit on August 1, 2022. When I asked, the Landlord was unable to cite any term of the Original Tenancy Agreement that stated the only person who was permitted to occupy the rental unit was the Tenant or that the maximum occupancy of the rental unit was one person or that the Landlord had to give her prior consent to any additional occupants.

The Tenant stated AN vacated the rental unit in August 2022. The Landlord stated the Tenant agreed to move out. The Tenant denied agreeing to vacate the rental unit. The Landlord acknowledged that she did not seek an Order of Possession based on the 1 Month Notice.

Although the Landlord stated she entered into a tenancy agreement ("New Tenancy Agreement") with two new tenants commencing on September 1, 2022, she did not submit into evidence a copy of the New Tenancy Agreement. The Tenant stated she was not aware of the Landlord renting the rental unit to new tenants. At the hearing, I instructed the Landlord to submit a copy of the New Tenancy Agreement to the Residential Tenancy Branch ("RTB") using either the online service portal for the RTB or by submitting a copy to any ServiceBC office in British Columbia by 4:00 pm on October 14, 2022. The Landlord complied with my instructions and submitted a copy of the New Tenancy Agreement for my review.

Analysis

Section 54 of the Act states:

- 54(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.

Pursuant to section 54 of the Act, a tenancy is entitled to seek an Order of Possession of the rental unit by making an application for dispute resolution. The Tenant made the Application in which she seeks an Order of Possession to the rental unit. The Landlord admitted she did not obtain an Order of Possession from the RTB to end the tenancy. The Tenant stated she did not agree to vacate the rental unit. I find the Landlord evicted the Tenant without complying with the requirements of the Act.

Residential Tenancy Policy Guideline 51 ("PG 51") states in part:

Order of Possession for Tenant

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.

[emphasis in italics added]

The Landlord testified she has rented the rental unit to two new tenants who are now occupying the rental unit commencing September 1, 2022. I have reviewed the New Tenancy Agreement and find it corroborates the Landlord's testimony that a new tenancy commenced on September 1, 2022 with two new tenants. Based on the

testimony of the Landlord and the New Tenancy Agreement, I find the rental unit is now occupied by two new tenants. As such, I am not able to grant an order of possession to the Tenant in these circumstances.

As stated in PG 51, the Tenant has the option of making a separate application for monetary compensation from the Landlord for any damage or loss she may have suffered. The Tenant may call the Contact Centre of the RTB to obtain information on claims for damages or loss in circumstances where a landlord evicted the tenant without complying with the requirements of the Act.

Conclusion

The Application is dismissed without leave to reapply.

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: October 19, 2022

Residential Tenancy Branch