



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AIJIA RENTALS ENTERPRISES
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPM, FFL**

Introduction

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act (“the Act”) for orders as follows:

- an order of possession for the rental unit
- recovery of the filing fee

Landlord QD appeared with counsel CS. The tenant appeared by agent YL, with counsel JL and interpreter TY. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Both parties confirmed they were not recording the hearing pursuant to RTB Rules of Procedure 6.11. The parties were affirmed.

The tenant confirmed receipt of the landlord’s dispute notice and supporting materials by registered mail sent October 7, 2022, and November 9, 2022. Pursuant to section 88 ad 89 of the Act the tenant is found to have been properly served. The tenant did not file any evidence.

Issue(s) to be Decided

1. Is the landlord entitled to an order of possession?
2. Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced September 1, 2020, on a month-to-month basis. Current rent is \$2,600.00 per month due on the first of each month. The landlord holds a security deposit of \$1,200.00 in trust for the tenant.

The tenant does not reside in the rental unit, it has been sublet to a sub tenant on a month-to-month basis. The tenant and sub-tenant signed a tenancy agreement that was not produced in evidence.

It is not disputed that on August 13, 2022, the landlord and tenant signed a mutual agreement to end the tenancy on August 31, 2022. Both the landlord and tenant stated that the sub-tenant has not vacated the rental unit.

The landlord stated they have no legal relationship with the sub tenant, the original tenancy agreement was between the landlord and tenant.

Analysis

RTB Policy Guideline 19 states:

Unlike assignment, a sublet is temporary. In order for a sublease to exist, the original tenant must retain an interest in the tenancy. While the sublease can be very similar to the original tenancy agreement, the sublease must be for a shorter period of time than the original fixed-term tenancy agreement – even just one day shorter. The situation with month-to-month (periodic) tenancy agreements is not as clear as the Act does not specifically refer to periodic tenancies, nor does it specifically exclude them. In the case of a periodic tenancy, there would need to be an agreement that the sublet continues on a month-to-month basis, less one day, in order to preserve the original tenant's interest in the tenancy...

Generally speaking, the sub-tenant does not acquire the full rights provided to tenants under the Act. For example, if the landlord ends the tenancy with the original tenant, the tenancy ends for the sub-tenant as well. The sub-tenant would not be able to dispute the landlord ending the tenancy with the original tenant; it would be up to the original tenant to dispute the notice.

Based on the evidence I find that the tenant sublet the rental unit to a sub tenant. Because the landlord and tenant have both signed a mutual agreement to end the tenancy, the tenancy has also ended for the sub-tenant. The landlord is therefore

entitled to an order of possession. The landlord is also entitled to recover the filing fee in respect of this application.

Conclusion

The landlord is granted an order of possession which will be effective two days after it is served on the tenant. The order of possession must be served on the tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The landlord is entitled to recover the filing fee and is permitted to deduct \$100.00 from the security deposit paid by the tenant.

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: November 30, 2022

Residential Tenancy Branch