



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPT, FFT**

Introduction

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

- For an order of possession pursuant to section 54 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Respondent IT appeared along with agents VS and TJ. The applicant KS appeared for herself. 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 respondent confirmed receipt of the applicant’s dispute notice and supporting materials. I find that service of those documents is in accordance with sections 88 and 89 of the Act.

The respondent stated that they dropped of their evidence package in person at the RTB office in Burnaby on December 30, 2022. There is no record of the package being delivered to the Burnaby office. Therefore, I decline to consider the respondent’s documentary evidence in support of the application.

Preliminary Issues

Name Correction

The respondent advised that the application did not have her correct last name. The application has been amended pursuant to section 64(3)(c) to reflect the correct last name of the respondent.

Jurisdiction

The respondent disputes that this is a tenancy that is governed by the Act. The parties are related. The evidence of the parties is that the applicant occupied the residence as of October 1, 2020. The property in question belonged to another family member who moved into long term care. The applicant required a place to stay, and an agreement was made that she occupy the family property, with the understanding that if the owner of the property died, she would be required to move out so the property could be sold.

The applicant stated that she paid \$1,000.00 per month in rent. She understood it to be rent based on text messages between her and the respondent. She did not produce the text messages in evidence. She occupied the property for approximately 26 months. She understood this to be a tenancy. She stated there was a written tenancy agreement. She did not produce this document in evidence as she stated that she can no longer access it. She was served with a Two Month Notice to End Tenancy (Two Month Notice) on an RTB form by the respondent at one point but did not confirm the date that document was received. She did not produce this document in evidence and was unable to provide the date that it was served on the tenant.

The respondent stated that there was no written tenancy agreement and characterized the arrangement as one of family members helping each other out. She agreed that the applicant had occupied the property for approximately 26 months. She stated that the \$1000.00 per month that was agreed upon by the parties was not rent but was for expenses related to the upkeep of the property and was required in order for the applicant to occupy the premises. She further stated that during the winter months the respondent paid the \$1,000.00 per month on behalf of the applicant. The applicant was responsible for paying the \$1,000.00 per month during the summer months. The respondent acknowledged that she served the Two Month Notice on the applicant, but stated she only used the form because it was the best document she could find to communicate to the applicant the need to vacate the property. She did not believe that it could be enforced through the RTB because this arrangement was not a tenancy.

The parties agree that no security deposit was paid. The applicant was the sole occupant of the property.

Analysis

A tenancy can be created without a written tenancy agreement and requires an assessment of the circumstances. Section 1 of the Act contains the following definitions:

"tenancy" means a tenant's right to possession of a rental unit under a tenancy agreement;

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

The Act also applies to a license to occupy. RTB Policy Guideline 9 defines the parameters of a license to occupy:

Under a licence to occupy, a person is given permission to use a rental unit or site, but that permission may be revoked at any time.

The applicant occupied the property for approximately 26 months with the express verbal permission of the respondent. Section 1 of the Act defines "landlord" as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

Both parties agree that the applicant was responsible for paying a monthly sum in exchange for possession of the property. That sum was paid by the respondent in some months and by the applicant in some months. Rent is defined broadly under the Act as money exchanged for a right to possession of the premises, and does not include certain things, none of which apply in this case. I note that the payment of rent is not required to create a tenancy, however it was paid in this case as part of an agreement

between the parties. The applicant was the sole occupant of the property during the time she lived there.

I find, based on an assessment of all the facts, that there was a tenancy or at the very least, a license to occupy. Therefore, I have jurisdiction over the matter.

Issue(s) to be Decided

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

Background and Evidence

The tenant stated that she was hospitalized for a week in December 2022. It is not in dispute that while the tenant was hospitalized, all her belongings were removed from the rental unit and the locks to the rental unit were changed by the landlord. The tenant provided an email message from the landlord and the landlord's agent dated December 13, 2022 in evidence confirming that the tenant's property had been removed from the residence and provided the tenant with details about where the belongings were stored.

The landlord confirmed that although they had served the Two Month Notice on the tenant, they did not have an order of possession for the rental unit.

Analysis

As the Act applies, the landlord can only end the tenancy according to the Act as listed in section 44. The landlord took preliminary steps to end the tenancy under the Act by serving the tenant with the Two Month Notice. However, the Act requires that if the tenant does not vacate the rental unit by the effective date listed in the Two Month Notice, the landlord then must seek an order of possession under the Act. The landlord did not obtain an order of possession. Therefore, they were not entitled to effectively end the tenancy by changing the locks, removing the tenant's belongings and barring access to the rental unit.

The tenant's application is granted. The tenant is entitled to an order of possession for the rental unit. The tenancy shall continue until it is ended in accordance with the Act. As the tenant was successful in her application the tenant is also entitled to recover the filing fee for the application.

Conclusion

The tenant is granted an order of possession which will be effective two days after it is served on the landlord. The order of possession must be served on the landlord. The landlord must provide access to the rental unit and any keys associated with entry into the rental unit. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia. The tenancy shall continue until it is ended in accordance with the Act. The tenant is authorized to deduct \$100.00 from one future month's rent on a one-time basis.

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: January 17, 2023

Residential Tenancy Branch