



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Code OPT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The applicant applied for an order of possession, pursuant to section 54.

Applicant CN (the applicant) and respondent JC (the respondent) attended the hearing. Witness for the applicant MZ also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Residential Tenancy Branch (RTB) Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure and section 95(3) of the Act.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

Issue to be Decided

Is the applicant entitled to an order of possession?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the applicant's claim and my findings are set out below. I explained

rule 7.4 to the attending parties; it is the applicant's obligation to present the evidence to substantiate the application.

Both parties agreed the applicant rented bedroom number 3 in a 5-bedroom house and shared the common spaces with 5 other tenants. Each tenant had an individual tenancy contract with the respondent. The respondent is the agent representing the rental unit's owner MK.

Both parties also agreed the tenancy started on December 14, 2022. Monthly rent was \$900.00, due on the first day of the month. The respondent collected and holds in trust the security deposit in the amount of \$450.00.

The respondent testified MK received an order of possession dated January 31, 2023 ordering tenant AL and any other occupant to move out. AL rented another bedroom in the same house. The file number is recorded on the cover page of this decision.

The applicant submitted into evidence two copies of the same order of possession. The first copy contains only AL's name, and the second copy contains AL, SR and the applicant's name.

The respondent served the order of possession containing only AL's name to the applicant around March 30, 2023, as the applicant was disturbing the other tenants.

The respondent said that he altered the order of possession to include the applicant's name because the applicant asked for an order of possession with his name on it. The respondent served the order of possession with the applicant's name to the applicant in April 2023.

The applicant affirmed that on April 17, 2023 he could not enter the rental unit, as the landlord changed the locks. The respondent stated that he removed the applicant's belongings, placed them in front of the house and changed the locks because the other tenants in the house were afraid of the applicant.

The respondent testified that he is aware that he cannot lock out a tenant and that he will deal with the consequences of his actions.

The respondent said that on April 18, 2023 he re-rented the applicant's bedroom to a new tenant named AR and that this tenant is currently occupying the rental unit.

The applicant visited the rental unit on April 18, 2023 and was informed by another occupant that his bedroom was rented to someone else.

The respondent's address for service is the rental unit's address, as he often goes to the rental unit. The respondent affirmed that he can also receive documents via e-mail, using the email address recorded on the cover page of this decision.

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 the case is on the person making the claim.

I accept the undisputed testimony that the tenancy started on December 14, 2022, on April 17, 2023 the landlord changed the locks and on April 18, 2023 the respondent re-rented the rental unit, which remains occupied until today.

Section 54 of the Act states:

- (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.

RTB Policy Guideline 51:

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.

(emphasis added)

As another tenant has been occupying the rental unit since April 18, 2023, I find the applicant is not entitled to an order of possession. The applicant is at liberty to file an application for monetary compensation.

Compliance Enforcement Unit Referral

Residential Tenancy Branch Policy Guideline 41 states:

The Residential Tenancy Branch may decide that an administrative penalty should be applied when the evidence shows the respondent has:

- Contravened a provision of the Legislation or regulations; or
- Failed to comply with a decision or order of the RTB.

Considering the respondent's undisputed affirmed testimony, I find the respondent altered an order of possession issued by the RTB to include the name of other parties and removed the applicant from the rental unit without an authentic order of possession.

Because I am concerned with the landlord's behaviour, I am sending a copy of this decision to my manager. My manager will review this decision and if they are of the opinion that these circumstances could reasonably lead to administrative penalties, then they will send a copy of this decision along with any other relevant materials from the dispute resolution file to the Compliance and Enforcement Unit. This separate unit of the Residential Tenancy Branch is responsible for administrative penalties that may be levied under the Act. They have the sole authority to determine whether to proceed with a further investigation into this matter and the sole authority to determine whether administrative penalties are warranted in these circumstances. After any dispute resolution materials are sent, neither I nor my manager play any role in their process and, if the Compliance and Enforcement Unit decides to pursue this matter, they do not provide me or my manager with any information they may obtain during their process.

Before any administrative penalties are imposed, a person will be given an opportunity to be heard. While the Compliance and Enforcement Unit can review the contents of the dispute resolution file, they can also consider additional evidence that was not before me. They are not bound by the findings of fact I have made in this decision.

Any further communications regarding an investigation or administrative penalties will come directly from the Compliance and Enforcement Unit.

Conclusion

I dismiss the application for an order of possession 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: May 12, 2023

Residential Tenancy Branch