



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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DECISION

Dispute Codes OPT FFT

Introduction

The Tenants seek an order of possession of a rental unit pursuant to section 54 of the *Residential Tenancy Act* (the “Act”). The Tenants seek recovery of their application fee pursuant to section 72 of the Act.

Issue

Are the Tenants entitled to an order of possession of the rental unit?

Evidence and Analysis

The Tenants and the Landlord entered into a tenancy agreement that was signed by both parties in late May 2023. The tenancy is to start on July 1, 2023. A copy of the tenancy agreement is in evidence. Rent is \$2,800 and the Tenants paid a \$1,400 security deposit. The parties do not dispute these facts.

The Tenants testified that the Landlord gave them the keys shortly after signing the tenancy agreement and basically let them start repairing and painting, before they move in on July 1. They have included photographs showing this work being done. However, the Landlord called the Tenant’s employer and left a voicemail, explaining that he had to cancel the tenancy. No reason was given. The Tenants testified that the Landlord also changed the locks.

The Tenants further testified that their current tenancy ends at the end of the month and if they cannot move into the rental unit on July 1 then they will have nowhere to go.

The Landlord testified that upon visiting the property, he found the door locked, which he found “strange” and that he had “a weird feeling.” He found it odd that the door was locked but he entered anyway. A key to the basement suite was missing. And he noticed that the bedrooms had been painted purple and gold, which he also found odd.

Continuing, the Landlord explained that he did some research on Google and found out about fraudsters who rented property and then re-rented those properties out. The Landlord also searched for the Tenant’s purported employer, a carpentry business, and found that they had an office in Calgary. “Nothing added up,” the Landlord commented. The Landlord admitted that he “should’ve done more” background checks on the Tenants and that the entire process was a bit “too smooth.” He added that, “I don’t think it’s a good idea” to rent to the Tenants, and that he is just not comfortable with it.

Section 16 of the Act states that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, regardless of whether the tenant ever occupies the rental unit.

Section 54(1) of the Act states that a tenant who has entered into a tenancy agreement may request an order of possession of the rental unit. In other words, the Tenants have the right to exclusive possession of the rental unit effective July 1, 2022, at 1 p.m., and that the Landlord may not end the tenancy unless a proper notice to end the tenancy is given under sections 44 through 49.1 of the Act.

Given the lack of any proper notice, it follows that the Landlord has no legal right to end the tenancy at this time. While I certainly appreciate the Landlord’s concerns about fraudsters and so forth, there is no persuasive, direct evidence before me to substantiate these fears. There is no evidence that the Tenants are fraudsters.

That the Tenants entered the property after the Landlord had given them a key is not in any way suspicious. And, while a purple or gold painted bedroom may be “odd” to some, it is by no means evidence that the Tenants are engaged in shenanigans.

However, in the unlikely event that there *does* arise a need for the Landlord to end the tenancy then he must do so by using the required notice to end the tenancy. See: www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/ending-a-tenancy/landlord-notice.

The Tenants are entitled to their right of exclusive possession of the rental unit (pursuant to section 28(c) of the Act) and their right to possession of the rental unit under the tenancy agreement (pursuant to section 1, “tenancy,” of the Act) upon commencement of the tenancy on July 1, 2023.

To ensure that the Tenants have access to the rental unit, and given the overly cautious conduct of the Landlord, I must grant the Tenants an order of possession of the rental unit effective July 1, 2023. A copy of the order of possession is issued with this Decision to the Tenants, who must serve a copy upon the Landlord, if necessary.

The Landlord is ordered, pursuant to section 62(3) of the Act, to permit the Tenants access and possession of the rental unit no later than 1 p.m. on July 1, 2023.

The Landlord is also ordered, pursuant to section 62(3) of the Act, to either (1) change the locks to the rental unit and to provide keys to the Tenants for those locks no later than July 1, 2023, at 1:00 p.m., or (2) provide copies of keys to the Tenants so that they may access the rental unit.

It is not lost on me that the Landlord permitted the Tenants access to the rental unit before the tenancy starts. However, the Tenants do not, in fact, have any legal right of access or possession of the rental unit before the start date of the tenancy.

The Tenants may deduct \$100 from a future rent payment as compensation for the cost of their application fee, pursuant to section 72 of the Act.

Conclusion

The Tenants' application is hereby granted.

The Tenants are granted an order of possession effective July 1, 2023, at 1 p.m.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: June 22, 2023

Residential Tenancy Branch