



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

ET

Introduction

This Dispute Resolution hearing was convened to deal with the landlord's application seeking an order to end the tenancy early without notice to the tenant.

The landlord appeared and a person stating that he represented the tenant appeared.

Issue(s) to be Decided

Is the landlord entitled to end the tenancy pursuant to section 56 of the Act?

Background and Evidence

The landlord testified that the respondent had originally been a co-tenant sharing the unit with another person who signed the tenancy agreement. On December 1, 2012, the person who signed the tenancy agreement left and the respondent took over the unit on his own pursuant to a verbal tenancy agreement with the landlord.

The rent was set at \$1,700.00 and a security deposit of \$300.00 was paid.

The landlord testified that on December 7, 2012 he visited the rental unit to collect the rent and found that there were numerous unknown occupants apparently in the suite along with his tenant. The landlord testified that he questioned the tenant about these individuals and whether they were going to be part of the tenancy agreement as cotenants. According to the landlord, the other residents refused to provide the landlord with their identification and the tenant indicated that these occupants were only his friends.

The landlord testified that on December 9, 2012, he attended the rental site to speak with the tenant again and asked to inspect the premises. The landlord testified that verbal permission was given and when he entered the suite he found the unit to be in a bad condition with drug paraphernalia in plain view. The landlord testified that he then gave the tenant a letter stating that he wanted the tenant to leave due to the condition of the unit and all of the additional occupants living in the suite. The landlord testified that the tenant verbally agreed that he would vacate the unit by the end of December 2012.

The landlord testified that at the end of December 2012 he received a telephone call from the tenant confirming that the tenant had terminated his tenancy and had already vacated the rental unit.

The landlord testified that, after the tenant let him know he was now returning possession to the landlord, the landlord went to the property on January 8, 2013. The landlord testified that he discovered that, although the tenant had vacated the suite as stated, other unknown occupants were still living in the suite.

The landlord testified that when these individuals were asked to leave, they refused and made threats of physical violence against the landlord and police were called. The landlord submitted written testimony from a witness verifying the details of this incident.

The landlord is seeking an immediate Order of Possession under section 56(1) of the Act as the delay in enforcing a One-Month Notice for Cause would be unreasonable and unfair to the landlord.

The person who attended on behalf of the respondent, stated that the tenant was incarcerated and that he was acting as agent for the tenant.

The agent for the tenant stated that the tenant had "sublet" the rental to him and others in December 2012 and the tenant collected \$1,100.00 for January 2013 rent from them.

The tenant's agent took the position that, because they had a rental agreement with the main tenant and their rent was paid in full, they had the same tenancy rights under the Act as any tenant would. They contend that they are also entitled to dispute the landlord's application on their own behalf.

The agent for the tenant stated that they were disputing the ending of the tenancy on the basis that the landlord does not have cause justifying an order of possession and that all of the allegations made in the landlord's application were false.

Analysis

In regard to the issue of whether or not the tenant had agreed to voluntarily end the tenancy and relinquish possession of the rental unit back to the landlord, I accept that this did occur on or around December 31, 2012.

However, I find that when the tenant moved out, he did not return vacant possession to the landlord as required under the Act. I find that the tenant left the unit occupied by some of his guests or subtenants.

Occupants or Co-Tenants

The Residential Tenancy Guidelines clarify the rights and responsibilities relating to multiple tenants renting premises under one tenancy agreement.

It describes a tenant as the person who has signed a tenancy agreement to rent residential premises. If there is no written agreement, it is the person who made an oral agreement to rent the premises and pay the rent to the landlord.

Co-tenants are two or more tenants who rent the same property under the same tenancy agreement together with the same landlord. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement including payment of the rent to the landlord sharing equal rights under the tenancy agreement.

Co-tenants are also jointly and severally liable for any unpaid rent or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord. When any one of the cotenants gives notice to end a tenancy, it ends the tenancy for all the co-tenants living in the rental unit

However, in this case, I find that the residents who remained in the rental unit are not co-tenants of this landlord and in fact, have no tenancy relationship with the applicant landlord. Their tenancy agreement, if one exists at all, would only be a verbal contract with the former tenant.

The Residential Tenancy Guidelines states that, where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

I accept the landlord's testimony that the people now living in the suite were never included in the tenancy agreement as co-tenants with the respondent. I find that these remaining residents were only considered to be occupants from the outset and as such they have no status under the Act.

Having found that the sole tenant had permanently ended the tenancy as of December 31, 2012, and vacated the unit, I hereby grant the landlord an Order of Possession effective January 31, 2013. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

The landlord is entitled to retain \$50.00 from the tenant's security deposit to reimburse for the filing fee, the remainder of which should be administered according to section 38 of the Act.

Conclusion

The landlord is successful in the application and an Order of Possession is granted

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 23, 2013

Residential Tenancy Branch

