



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CITY OF VANCOUVER
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPM

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on September 19, 2018 (the "Application"). The Landlord sought an Order of Possession based on a Mutual Agreement to End a Tenancy (the "Mutual Agreement").

The Agent appeared at the hearing for the Landlord. Nobody appeared at the hearing for the Tenant. I explained the hearing process to the Agent who did not have questions when asked. The Agent provided affirmed testimony.

The Landlord had submitted evidence prior to the hearing. The Tenant had not submitted evidence. I addressed service of the hearing package and Landlord's evidence. The Agent testified that the hearing package and evidence were personally served on the Tenant on September 26, 2018.

Based on the undisputed testimony of the Agent, I find the Tenant was served with the hearing package and evidence in accordance with sections 88(a) and 89(2)(a) of the *Residential Tenancy Act* (the "Act"). I also find the Tenant was served in sufficient time to allow the Tenant to prepare for, and appear at, the hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Agent was given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the Agent. I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Mutual Agreement?

Background and Evidence

A written tenancy agreement was submitted as evidence. It is between the Landlord, Tenant and P.O. The agreement also lists two other individuals including S.O. The agreement seems to list these two individuals as either tenants or occupants. The agreement relates to the rental unit. The tenancy started March 1, 2000 and is a month-to-month tenancy. The agreement is signed by the Tenant, P.O. and on behalf of the Landlord. There is a signature on the back where the two other individuals are listed; however, it is not clear whose signature this is.

The Agent explained that the Tenant and P.O. are the mother and father and the other two individuals, including S.O., are their adult sons. She testified that the two sons have “challenges” and lived with their parents. The Agent testified that the Tenant no longer lives at the rental unit but S.O. does. The Landlord is seeking an Order of Possession for the rental unit because S.O. has refused to vacate.

The Agent submitted that S.O. is only an occupant and not a tenant under the tenancy agreement. She said the Landlord only corresponded with the Tenant and P.O. She testified that the sons would not have had the capacity to enter into a contract.

The Mutual Agreement was submitted as evidence. It is between the Landlord and Tenant and refers to the rental unit. It states that the Tenant agrees to vacate the rental unit by April 1, 2018. The Mutual Agreement was signed by the Tenant and on behalf of the Landlord on September 18, 2018.

The Agent explained the reason for the dates on the Mutual Agreement as follows. She was tasked with looking into arrears for the Landlord and noticed the Tenant was in arrears. She contacted the Tenant and met with her on September 12, 2018. They discussed when the Tenant vacated the rental unit and the Tenant told her she did so in April. The parties therefore signed the Mutual Agreement in September stating the tenancy ended in April.

The Agent testified that rent has not been paid for the rental unit since March of 2017. She confirmed that S.O. has not paid rent since April. The Agent confirmed there is no separate tenancy agreement between the Landlord and S.O.

Analysis

Based on the undisputed testimony of the Agent, and evidence submitted, I accept that someone for the Landlord and the Tenant signed the Mutual Agreement in September to end the tenancy in April.

Pursuant to section 44(1)(c) of the *Act*, the Mutual Agreement ended the tenancy.

Here, there is a question as to whether S.O. is a tenant or occupant. Policy Guideline 13 addresses co-tenants and occupants and states in part the following:

A tenant is the person who has signed a tenancy agreement to rent residential premises...Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

...

Where co-tenants have entered into a periodic tenancy, and one tenant moves out, that tenant may be held responsible for any debt or damages relating to the tenancy until the tenancy agreement has been legally ended. If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants. If any of the tenants remain in the premises and continue to pay rent after the date the notice took effect, the parties may be found to have entered into a new tenancy agreement...[emphasis added]

Occupants

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 do not find the tenancy agreement clear in relation to whether the two sons, including S.O., are tenants or occupants in relation to this tenancy agreement. I do not find the argument that S.O. is an occupant to be compelling without further information and evidence on this point. However, I do not find it necessary to determine whether S.O. is a tenant under the tenancy agreement or occupant as the result is the same.

If S.O. is a tenant under the tenancy agreement, he is clearly a co-tenant with the Tenant. When the Tenant ended the tenancy by signing the Mutual Agreement in September, she ended the tenancy for all tenants. Here, the Landlord did not enter into a new tenancy agreement with S.O. nor would I find that a new tenancy agreement was created as no rent has been paid since 2017.

If S.O. is an occupant, he has no rights under the tenancy agreement and was required to vacate the premises when the Tenant ended the tenancy agreement.

In either scenario, S.O. has no right to remain in the rental unit. Pursuant to section 55(2)(d) of the *Act*, the Landlord is entitled to an Order of Possession for the rental unit. This Order will apply to S.O. whether he is a tenant under the tenancy agreement or occupant as explained above. The Landlord is granted an Order of Possession effective two days after service on the Tenant. The Landlord should also serve a copy of the Order of Possession on S.O. so that he is aware of it.

Conclusion

The Landlord is granted an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant. The Landlord should also serve a copy of the Order of Possession on S.O. so that he is aware of it. If S.O. does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 05, 2018

Residential Tenancy Branch