



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OKANAGAN METIS AND ABORIGINAL HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for an Order of Possession.

The Tenant and an advocate were present for the hearing (the “Tenant”) as was an agent for the Landlord (the “Landlord”). Although the Landlord noted that the Tenant is not a current tenant, as she was a tenant in the past and the parties had a landlord-tenant relationship, I find it reasonable to refer to her as a tenant in this matter.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Tenant confirmed receipt of a copy of the Landlord’s evidence.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have considered all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Is the Tenant entitled to an Order of Possession for the rental unit?

Background and Evidence

The Tenant provided testimony that she and co-tenant J.K. signed a tenancy agreement with the Landlord to begin the tenancy on August 1, 2018. She stated that it was a month-to-month tenancy and that she paid a monthly amount of \$635.00. The Tenant submitted ministry payment information into evidence showing a monthly payment for housing in this amount.

The Tenant testified that she went away on June 26, 2019 and received a phone call from the RCMP stating that she was no longer welcome at the rental unit. She stated that she was asked to come and collect her belongings and that she did so on June 30, 2019. She has not resided in the rental unit since.

The Tenant stated her position that the tenant J.K. asked to have her removed from the tenancy agreement and that the Landlord did so illegally. The Tenant would like an Order of Possession that would allow her to move back into the rental unit.

The Tenant noted that she no longer had a copy of the original tenancy agreement and when she went to the Landlord's office to ask for a copy after June 30, 2019, they advised her that they could not give her a copy as she was no longer named on the agreement. The Tenant testified that J.K. still resides in the rental unit.

The Landlord was in agreement as to the tenancy dates as stated by the Tenant and that the Tenant and tenant J.K. were initially on the tenancy agreement together. The Landlord stated their position that the issue is between the Tenant and tenant J.K. and not between the Landlord and Tenant. They stated that J.K. took the Tenant off of the tenancy agreement and as she is no longer on a current tenancy agreement, they cannot just put her back on.

The Landlord submitted into evidence an email from J.K. dated July 15, 2019 which states in part the following:

[The Landlord] did NOT evict [the Tenant] from the [rental unit]. [The Tenant] mutually agreed with me on June 30, 2019, to pick up her personal belongings from the [rental unit] in the presence of a peace officer.

Analysis

Section 54 of the *Act* states the following regarding an Order of Possession for a tenant:

- 54 (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.

As indicated, a tenant may request an Order of Possession if the tenant is entitled to occupy the rental unit. However, in this matter both parties were in agreement that the Tenant is no longer on the tenancy agreement, despite being on a written tenancy agreement in the past. Neither party submitted a current tenancy agreement into evidence that would establish that the Tenant is entitled to possession of the rental unit.

Although it is unclear exactly what happened that led to the Tenant being removed from the tenancy agreement, I find that this is not the matter before me. As stated by rule 2.2 of the *Residential Tenancy Branch Rules of Procedure*, the claim is limited to what is stated on the application. As the Tenant has applied for an Order of Possession, I find that I must dismiss the Tenant's request, given that I am not satisfied that she is entitled to possession of the rental unit, regardless of how that situation came to be.

I cannot grant a Tenant an Order of Possession in a situation where the Tenant has not established that there is a current tenancy agreement in place. Furthermore, I cannot order one tenant (tenant J.K) to accept another tenant moving into the rental unit in the absence of their mutual agreement to do so.

Therefore, I find that the Tenant is not entitled to an Order of Possession for the rental unit. The Tenant's application is dismissed, without leave to reapply.

Conclusion

The Application for Dispute Resolution is dismissed, 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: November 19, 2019

Residential Tenancy Branch