



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O (OP), FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing via conference call and gave undisputed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was personally served with the Notice of Hearing Package and the submitted documentary evidence on July 24, 2015. I accept the undisputed evidence of the landlord and find pursuant to section 88 and 89 of the Residential Tenancy Act that the tenant was properly served in person with the Notice of Hearing Package and the submitted documentary evidence.

Preliminary Issue

Counsel for the landlord clarified that the initial mutual agreement dated March 31, 2015 naming C.C. for #3 and N.G. for #4 was an agreement for both tenants under two different tenancies. The landlord clarified that he had then entered into a new and separate mutual agreement with N.G. on July 22, 2015. The landlord stated that a copy of the mutual agreement to end tenancy with N.G. was also submitted to the Residential Tenancy Branch (the RTB) via facsimile. A search of the RTB's file and online system showed no subsequent documentary evidence being provided by the landlord. Counsel provided direct testimony that evidence has gone missing in the past when he has submitted documents in this fashion. Counsel provided the details of this agreement verbally during the hearing and was authorized to provide a written copy to the RTB via facsimile within 1 hour of the completion of the hearing. The landlord and counsel were advised that upon receipt of this document a decision would be made on the basis of

this document. A copy of the mutual agreement dated July 22, 2015 was received within the allowed timeframe.

Counsel, O.M. for the landlord stated that the tenant's name was inadvertently misspelled on the application. He provided the proper spelling of the tenant's last name in his direct testimony as per the submission of a copy of the mutual agreement to end tenancy dated July 22, 2015. I accept the undisputed evidence of the landlord and order that the application and any subsequent document related to this file reflect the proper spelling provided based upon the submission of the agreement dated July 22, 2015.

Issue(s) to be Decided

Is the landlord entitled to an order of possession based upon a mutual agreement to end the tenancy?

Is the landlord entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The landlord stated that there was no signed tenancy agreement and that this tenancy began approximately 4 years ago on a month-to-month basis where the tenant rents a room within his rental property. The monthly rent is \$550.00, payable on the 1st of each month and a security deposit of \$275.00 was paid.

The landlord has submitted a copy of a mutual agreement to end tenancy dated July 22, 2015, which stated that both the landlord and the tenant shall end the tenancy on August 15, 2015 at 12:00 pm. The Agreement also provides details of monetary compensation to be paid to the tenant from the landlord of \$2,000.00. According to their agreement, the landlord was to pay the tenant \$1,000.00 on July 22, 2015, and the balance of \$1,000.00 upon vacating the rental unit.

The landlord stated that the tenant accepted the initial \$1,000.00 payment, but has not vacated the rental unit as of the date of this hearing. The landlord seeks an order of possession based upon the mutual agreement dated July 22, 2015 and recovery of the \$50.00 filing fee.

Analysis

Section 55 of the Residential Tenancy Act states,

55 (2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(d) **the landlord and tenant have agreed in writing that the tenancy is ended.**

I accept the undisputed evidence submitted by the landlord and find that a mutual agreement to end tenancy was made on July 22, 2015 between the landlord and the tenant and that the tenant still occupies the rental unit. The mutual agreement dated July 22, 2015 is upheld. As the effective end of tenancy date of August 15, 2015 has passed, I grant the landlord an order of possession effective two days after being served upon the tenant.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application. The landlord is provided with a Monetary Order for \$50.00.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant a Monetary Order to the landlord for \$50.00. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Small Claims Division of the Provincial Court of British Columbia.

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: August 19, 2015

Residential Tenancy Branch

