



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, FF

Introduction

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

- an Order of Possession based on a mutual agreement to end tenancy, pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 16 minutes. The landlord's agent, GM ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he had authority to represent the landlord named in this application as an agent at this hearing.

The landlord confirmed that there are three owners of this rental unit. He stated that he also had authority to represent the landlord named in the tenancy agreement and mutual agreement to end tenancy, who is different from the landlord named in this application. The landlord provided documentary evidence to confirm this fact.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package ("Application") on February 13, 2016 by way of registered mail. The landlord provided a Canada Post receipt and tracking number with this Application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' Application on February 18, 2016, five days after its registered mailing.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's Application to replace the landlord's claim for an order of possession for landlord's use of property with an order of

possession based on a mutual agreement to end tenancy. The landlord filed the appropriate amendment form on March 3, 2016, and submitted a copy to the tenant by way of registered mail on the same date. The landlord provided a Canada Post receipt and tracking number to confirm service. The tenant was deemed served with the amendment on March 8, 2016, five days after its registered mailing, and more than 14 days prior to this hearing. I asked the landlord to provide me with a copy of the filed amendment form after this hearing, by way of facsimile, as I did not have a copy on file, despite the fact that the landlord filed it at the Residential Tenancy Branch ("RTB") on March 3, 2016. After the hearing, I received and considered this amendment from the landlord prior to writing this decision.

Issues to be Decided

Is the landlord entitled to an Order of Possession based on a mutual agreement to end tenancy?

Is the landlord entitled to recover the filing fee for this Application from the tenant?

Background and Evidence

The landlord testified that this tenancy began on April 18, 2015, but the tenant moved in on April 21, 2015. He noted that monthly rent in the amount of \$1,200.00 is payable on the 18th day of each month. The landlord stated that a security deposit of \$600.00 and a pet damage deposit of \$600.00 were paid by the tenant and the landlord continues to retain this deposit. He confirmed that the tenant continues to have possession of the rental unit. The landlord provided a written tenancy agreement signed by both parties.

The landlord stated that there was initially a dispute with the tenant about whether this was a fixed term tenancy agreement, which required the tenant to vacate at the end of the fixed term on April 17, 2016. He noted that the landlord initially served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated January 14, 2016 and effective on April 17, 2016 ("2 Month Notice").

The landlord stated that the parties then reached a mutual agreement to end the tenancy. The landlord provided a copy of a mutual agreement to end tenancy, dated February 29, 2016, and effective at 1:00 p.m. on March 31, 2016 ("mutual agreement"). The landlord testified that both the landlord and tenant signed this mutual agreement. He noted that the landlord agreed that the tenant did not owe rent of \$1,200.00 for March 2016 and it had not been paid by the tenant, as part of this mutual agreement.

The landlord seeks an order of possession based on this mutual agreement and to recover the \$100.00 paid for this Application.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. Based on the landlord's testimony and the mutual agreement to end tenancy signed by both parties, I find that the landlord is entitled to an Order of Possession effective at 1:00 p.m. on March 31, 2016, pursuant to section 55 of the *Act*.

As the landlord was successful in this Application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the Application.

Conclusion

I grant an Order of Possession to the landlord effective **at 1:00 p.m. on March 31, 2016**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to deduct \$100.00 from the tenant's security deposit of \$600.00 in full satisfaction of the monetary award for the filing fee. The remainder of the tenant's security deposit of \$500.00 and the full pet damage deposit of \$600.00 are both to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

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: March 24, 2016

Residential Tenancy Branch

