



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

O FF OPB

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, received at the Residential Tenancy Branch on January 11, 2017 (the "Application"). The Landlords applied for an order granting recovery of the filing fee, and for other relief, pursuant to the *Residential Tenancy Act* (the "Act").

In addition, the written details on the Landlords' Application confirm the Landlords sought an order of possession based on a Mutual Agreement to End a Tenancy, dated November 30, 2016. Pursuant to section 64 of the *Act*, I find it appropriate in the circumstances to amend the Landlord's Application to include the claim for an order of possession.

The Landlord H.P. attended the hearing and was assisted by P.V., his legal counsel. The Tenants attended the hearing, although they signed into the hearing after much of the Landlord's oral testimony had been provided. However, the Landlord's oral testimony was summarized for the Tenants and the Tenants were given an opportunity to respond. All parties giving oral testimony provided a solemn affirmation.

The Landlord H.P. confirmed that the Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Tenants, in person, on January 11, 2017. I find the Landlords' Application package was served on the Tenants on that date.

All parties were represented at the hearing. Although the Tenants joined the telephone conference late, they were given an opportunity to be heard. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

Preliminary and Procedural Matters

The written details contained in the Application suggest the Landlords wished to recover unpaid rent for January 2017 and compensation for damage to the rental unit. However, the Landlords' Application does not provide a monetary amount sought, and does not include a monetary order worksheet or other documentary evidence in support of monetary relief. As a result, this hearing will deal only with the Landlords' Application for an order of possession; the remainder of the Landlords' claim for monetary relief is dismissed with leave to reapply.

Issues to be Decided

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to recover the filing fee?

Background

Neither of the parties submitted a copy of the tenancy agreement into evidence. There was some minor discrepancy regarding the beginning of the tenancy. However, the parties agreed rent was \$775.00 per month, and that the Landlord has repaid a security deposit to the Tenants.

The Landlord wished to obtain an order of possession based on a Mutual Agreement to End a Tenancy, dated November 30, 2016 (the "Mutual Agreement"). A copy of the Mutual Agreement was submitted with the Landlords' documentary evidence. It documents the parties' agreement to end the tenancy on December 31, 2016, at 1:00 p.m. However, the Tenants did not move out at that time. According to the Landlord, the Tenants moved out of the rental unit on February 3, 2017, but have threatened to return.

In addition to the Mutual Agreement, the Landlord submitted into evidence two further hand-written documents. The first document, dated December 1, 2016, confirms the Tenants' agreement to move out of the rental unit by January 1, 2017, and permits the Landlord to leave the Tenants' belongings outside if they did not comply. This document appears to have been signed by both Tenants.

The second document, dated January 1, 2017, confirmed that the security deposit and other amounts were paid to the Tenants. The Tenant A.S. acknowledged that this document was signed by the Tenants.

On behalf of the Tenants, A.K. requested and was given a full opportunity to be heard. She confirmed signing the document that confirms the Landlord returned the security deposit and paid other amounts to the Tenants, but did not remember signing any other document.

A.K. also stated that the stress associated with the tenancy has caused the Tenant W.S. stress and caused him to have a stroke.

In addition, A.K. testified that she did not agree to end the tenancy but was locked out of the rental unit when the Tenants went to the drug store to pick up a prescription. She testified that the Tenants have been living in a hotel.

Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 55 of the *Act* permits a landlord to request an order of possession of a rental unit when the landlord and tenant have agreed in writing that the tenancy is ended.

In this case, although the Tenant A.K. denied an agreement to end the tenancy, I find the parties agreed in writing that the tenancy would end on December 31, 2016, at 1:00 p.m. There are two primary reasons for this conclusion. First, the Landlord returned the security deposit to the Tenants, which was acknowledged by A.K. There would have been no obligation on the part of the Landlords to do so unless the tenancy had ended. Second, the Landlord submitted three documents into evidence, each of which was purported to be signed by both Tenants. On behalf of both Tenants, A.K. confirmed the document confirming payment of the security deposit and other amounts to the Tenants was signed by them. Upon comparing the signatures, they appear to be identical. I find it to be more likely than not that the Tenants signed all three documents, although they may not recall doing so.

Although the Tenants asserted a vague entitlement to continue the tenancy, I conclude the parties agreed to end the tenancy on December 31, 2016, at 1:00 p.m. Accordingly, I grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenants.

As the Landlord has been successful, I grant the Landlord a monetary award of \$100.00 as recovery of the filing fee paid to make the Application. Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$100.00.

Conclusion

I grant the Landlord an order of possession, which will be effective two (2) days after it is served on the Tenants. This order may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$100.00. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: February 7, 2017

Residential Tenancy Branch