



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Squirrel Resources Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPB; FF

Introduction

This is the Landlord's Application for Dispute Resolution seeking an Order of Possession and to recover the cost of the filing fee from the Tenant.

Both parties gave affirmed testimony at the Hearing. It was determined that the Landlord served the Tenant with the Notice of Hearing documents and copies of his documentary evidence, by registered mail sent on May 24, 2017. I described the contents of the Landlord's documentary evidence and the Tenant acknowledged that she had received the documents.

The Tenant testified that she had faxed documents to the Residential Tenancy Branch "last Wednesday". I advised the Tenant that there were no documents from the Tenant on the file or in the electronic filing system.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for breach of the tenancy agreement?

Background and Evidence

The Landlord's agent stated that the tenancy agreement required the Tenant to move out of the rental unit on April 30, 2017, but the Tenant refuses to move. A copy of the tenancy agreement was provided in evidence.

The Tenant stated that the initials on page 2 of the tenancy agreement were not hers.

The Landlord's agent testified that the parties had been to a previous hearing on May 17, 2017, and that it had already been decided that the tenancy agreement was valid. A copy of the Decision dated May 18, 2017, was provided in evidence.

Analysis

The May 16, 2017 hearing was for the Tenant's Application for Dispute Resolution seeking an Order that the Landlord comply with the Act. The issues identified were:

- Did the Tenant enter into a fixed term tenancy agreement under duress?
- Has the Tenant provided sufficient evidence that the fixed term tenancy agreement was falsified?

The Decision dated May 17, 2017, provides, in part:

"I find these claims are unproven and I dismiss the Tenant's Application and find that the fixed term tenancy signed by the parties is legal, valid, and enforceable."

Therefore, I find that the decision with respect to the validity of the tenancy agreement has been made and this matter is res judicata. Res judicata is the principle that a matter may not be re-litigated once it has been judged on its merits by a court of competent jurisdiction.

This was a fixed term tenancy ending April 30, 2017. The tenancy agreement provides, in page 2, paragraph 2:

At the end of this fixed length of time, the tenancy ends and the tenant must move out of the residential unit. If you choose this option, both the landlord and tenant must initial in the boxes to the right.

The parties' initials appear in the boxes to the right of the term.

I find that the Tenant is in breach of paragraph 2 of the tenancy agreement and that the Landlord is entitled to an Order of Possession.

The Landlord is entitled to recover the cost of the \$100.00 filing fee from the Tenant.

Conclusion

The Landlord is hereby provided with an Order of Possession for service **effective 2 days after service of the Order upon the Tenant**. This Order may be enforced through the Supreme Court of British Columbia.

Pursuant to the provisions of Section 72 of the Act, the Landlord may deduct the cost of the filing fee from the security deposit. The remainder of the security deposit must be applied in accordance with the provisions 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: July 05, 2017

Residential Tenancy Branch