



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OBP FF

Introduction

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- an Order of Possession based on a fixed-term tenancy and pursuant to section 55 of the *Act*; and
- authorization to recover her filing fee for this application from the tenants pursuant to section 72 of the *Act*.

Both the tenants and the landlord appeared at the hearing. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenants confirmed receipt of the landlord’s application for dispute resolution and evidentiary packages in person on June 16, 2017. The tenants testified that the individual packages were mixed up and tenant C.S.’ package was served on tenant N.O., and vice versa. Nevertheless, they acknowledged receipt of the documents and packages. Pursuant to sections 88 and 89 of the *Act*, I find that the tenants were duly served with these documents on June 16, 2017.

On July 4, 2017 the landlord amended her application for dispute resolution to include a monetary order of \$910.00. She said this money was the amount that remained unpaid and outstanding for July 2017. She explained that the tenants overheld in the rental unit for July 2017 and paid only \$690.00. Pursuant to section 64 of the *Act* the landlord’s application is amended to reflect this change.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?
Can the landlord recover the filing fee?

Background and Evidence

The landlord provided testimony, which the tenants disputed, that this was a fixed-term tenancy that began on October 1, 2016 and ended on June 30, 2017. Both parties acknowledged that rent was \$1,600.00 per month and that deposits of \$800.00 (security) and \$400.00 (pet) continue to be held by the landlord.

The tenants argued that this tenancy agreement was fraudulent. They explained that the tenancy agreement indicating the June 30 move-out date was backdated by the property manager after they signed it in March 2017.

It should be noted that a copy of the tenancy agreement submitted into evidence by the landlord shows the parties agreed to a tenancy that starts on October 1, 2016, is to run for 9 months and is set to expire on June 30, 2016.

During the course of the hearing, the landlord disputed the tenants' assertion that this was a backdated tenancy agreement and pointed to the tenants' signatures on the agreement, along with their initials indicating they agreed with the date the tenancy was set to end.

In addition to an Order of Possession, the landlord is seeking a Monetary Order of \$910.00. This amount represents the unpaid rent for July 2017. The landlord explained that she contacted the tenants on, or around June 1, 2017 to inform them that they had a fixed-term tenancy which she was not prepared to renew. She stated that she told the tenants they were expected to move out by the end of the month. The tenants have remained in the unit and they have paid \$690.00 for occupancy of the property during July 2017. The landlord said she provided the tenants' with a receipt *for use and occupancy only*.

The tenants explained that they had only oral evidence to present at the hearing because they stated the *Residential Tenancy Branch* refused to accept their physical evidence when they attempted to submit it on July 25, 2017. The tenants said that the evidence they had included photos, a copy of the tenancy agreement and other documentation supporting their case.

Analysis

The landlord has applied for an Order of Possession based on a fixed-term tenancy that she says was set to end on June 30, 2017. The tenants disputed the authenticity of the fixed-term tenancy document. They argued that the tenancy agreement entered in to evidence by the landlord was fraudulent, was back dated and was in fact signed in March 2017.

During the hearing the tenants stated that the evidence they attempted to submit the day before the hearing was not accepted by the *Residential Tenancy Branch*. The tenants explained that their evidence was rejected by an information officer at the *Residential Tenancy Branch* when they attempted to enter it. I find little reason why this would have occurred. The evidence which the tenants purported to have submitted was described as being documentary evidence which is accepted.

The *Residential Tenancy Branch Rules of Procedure* governs the issue of late evidence. *Rules 3.15* notes that, "In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing." Based on the tenants own testimony, it is clear that they did not comply with this requirement.

The tenants also expressed frustration about being informed on June 1, 2017 that their tenancy would be ending at the end of that month.

Section 55 of the *Act* notes that, "A landlord may request an order of possession of a rental unit by making an application for dispute resolution when the tenancy agreement is a fixed-term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed-term."

The issue of a fixed-term tenancy is explored in more detail by *Residential Tenancy Policy Guideline #30*. This guideline notes, "A fixed-term tenancy is a tenancy where the landlord and tenant have agreed that the tenancy agreement will begin on a specified date and continue until a predetermined expiry date... Fixed-term tenancy agreements must state the date the tenancy ends, and whether the tenancy may continue as a periodic tenancy or for another fixed-term after that date or whether the tenant must vacate the rental unit on that date."

I find the tenants had insufficient evidence to rebut the validity of the fixed-term tenancy signed between the parties. The landlord explained that this tenancy which began in October 2016 was set to expire 9 months later in June 2017. I acknowledge that this is an obvious error, and 9 months from the date of its signing would be June 30, 2017. I accept this testimony and find it difficult to imagine a scenario where a landlord would backdate a tenancy agreement to end before it started. Therefore, I find that landlord is entitled to a 2 Day Order of Possession based on a fixed-term tenancy that was to end on June 30, 2017.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove her entitlement to a claim for a monetary award.

The landlord explained that the tenants had not paid rent in its entirety for July 2017. The landlord stated that a partial payment of \$690.00 was received by the landlord and a receipt *for use and occupancy only* was given to the tenants. As the tenants continue to occupy the rental unit, the landlord is entitled to recover the outstanding amount of rent due for July 2017.

As the landlord was successful in her application, she may recover the \$100.00 filing fee from the tenants.

Using the offsetting provisions contained in section 72(2) of the *Act* the landlord may apply \$1,010.00 of the security and pet deposit that she currently holds, against the outstanding money owed.

Conclusion

The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within 2 day of service of this Order, the landlord may enforce this Order in the Supreme Court of British Columbia.

I am making a Monetary Order in favour of the landlord as follows:

Item	Amount
Rental Arrears for July 2017	\$910.00
Recovery of Filing Fee	100.00
Less Security and Pet Deposit	(-1.010.00)
Total Monetary Award	\$0.00

I Order under section 72(2) that the landlord is to apply \$1,010.00 of the security and pet deposit that she currently holds, against the outstanding money owed

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 31, 2017

Residential Tenancy Branch