



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM

Introduction

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

- an Order of Possession on the basis of a mutual agreement to end this tenancy pursuant to section 44(c).

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant acknowledged receipt of the Landlord's Application for Dispute Resolution (the Application) and evidentiary package sent by Canada Post Registered Mail on August 03, 2017. Pursuant to section 88 and 89 of the Act, I find the tenant has been duly served with these documents.

The tenant confirmed that they did not provide any evidence.

Issue(s) to be Decided

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

Background and Evidence

While I have turned my mind to all documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord testified that this tenancy began on March 01, 2017, as a fixed term tenancy that was signed by the landlord, the tenant and the tenant's female friend, with a vacate date of March 31, 2017, that was initialled by the landlord and both tenants.

The landlord testified that a second tenancy agreement was signed on April 01, 2017, as a fixed term tenancy that was signed by the landlord and the tenant with a vacate date of April 30, 2017, that was initialled by the landlord and the tenant.

The landlord gave written evidence that a third tenancy agreement was signed on May 16, 2017, with a monthly rent of \$695.00 due on the first day of the month. No vacate clause was agreed to in this third tenancy agreement between the landlord and the tenant. The tenancy agreement indicates a security deposit of \$297.50 but the landlord testified that this was not paid by the tenant.

The tenant confirmed all of the above to be true. The tenant testified that the landlord never asked for the security deposit and that the tenant would have paid it to the landlord if it had been requested.

The landlord entered into written evidence a Mutual Agreement to End a Tenancy (the Mutual Agreement) for the rental unit, dated May 16, 2017, with a vacate date of August 01, 2017, signed by the landlord and the tenant.

The landlord testified that they never wanted to enter into a tenancy agreement with the tenant but that the tenant was in the rental unit at the time that the previous tenants were moving out. The landlord stated that he eventually agreed to sign a tenancy agreement with the tenant and the tenant's female friend but he would only sign the tenancy agreement with a vacate clause that was agreed to by all parties.

The landlord stated that he would like an Order of Possession for the rental unit.

The tenant testified that social assistance told him that they would no longer give the tenant shelter payments based on fixed term tenancies. The tenant testified that this was the reason for the third tenancy agreement that did not have a vacate clause. The tenant stated that he did not know he would be required to move out of the rental unit and thought that he had a good relationship with the landlord. The tenant testified that he does not remember signing the Mutual Agreement and disputes whether the signature on the Mutual Agreement is actually his. The tenant stated that he does not mutually agree to end the tenancy and wants to remain in the rental unit.

Analysis

Section 44 (c) of the *Act* allows for a tenancy to end if the landlord and the tenant agree in writing to end the tenancy.

I have reviewed all documentary evidence and sworn testimony and I find that the landlord and tenant entered into two fixed term tenancy agreements before the third tenancy agreement, dated May 16, 2017, was signed. I find that this pattern shows the landlord was not willing to enter into a tenancy agreement with the tenant without having an established vacate date agreed to by the landlord and the tenant.

Based on the balance of probabilities, I accept the landlord's sworn testimony and written evidence that a Mutual Agreement to End a Tenancy was signed by the landlord and the tenant on May 16, 2017, at the same time that the third tenancy agreement was signed, which required the tenant to vacate the rental unit on August 01, 2017.

As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) 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.

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 25, 2017

Residential Tenancy Branch