



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, OPC, OPR

Introduction

The Application for Dispute Resolution (the “Application”) originally filed by the Landlord under the *Residential Tenancy Act* (the “Act”), sought an Order of Possession for unpaid rent or utilities. An Amendment to an Application for Dispute Resolution (the “Amendment”) was subsequently filed by the Landlord seeking an Order of Possession for cause and for a breach of a fixed term tenancy agreement.

The hearing was convened by telephone conference call and was attended by the Landlords, both of whom provided affirmed testimony. The Tenant did not attend. The Landlords were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of these documents as explained below.

The Landlords testified in the hearing that the Application, the Amendment, the Notice of Hearing, and the evidence package were all sent to the Tenant on August 17, 2017, by registered mail and provided a copy of the registered mail receipt in the evidence before me. As a result, I find that the Tenant was duly served on August 22, 2017, five days after the registered mailing, and the Application is amended accordingly.

As a result of the above, this hearing dealt with the Landlords request for an Order of Possession for a breach of the fixed term tenancy agreement, cause, and for unpaid rent.

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

Preliminary Matters

At the outset of the hearing I identified that the Applicant, S.J., is not the Landlord listed on the Tenancy Agreement. S.J. and another party present in the hearing, R.B., testified that they are the owners and Landlords of the property rented by the tenant and that the Landlord listed on the tenancy agreement, P.J., is a family member and their Agent.

As a result of the above and in the absence of evidence to the contrary, I find that S.J. and R.B. both meet the definition of a Landlord pursuant to section 1 of the *Act*. As a result, they will be referred to as the “Landlords” in this decision. I also find that P.J., the Agent for the Landlords, meets the definition of a Landlord pursuant to section 1 of the *Act* and for the sake of clarity, shall be referred to in this decision as the “Agent”

Issue(s) to be Decided

Is the landlord entitled to an order of possession under the *Act*?

Background and Evidence

The Landlords submitted into the documentary evidence before me, a copy of a fixed term tenancy agreement signed by the agent for the Landlords (the “Agent”) and the Tenant on May 3, 2017. The tenancy agreement states that the tenancy, which began on May 1, 2017, is a three month fixed-term tenancy, with an end date of August 1, 2017. The tenancy agreement also contains a move-out clause, which was initialed by both the Agent and the Tenant, indicating that the Tenant must move out at the end of the fixed-term. The Tenancy agreement states that rent is \$1,995.00 per month, payable on the first day of each month, and that a security deposit in the amount of \$1000.00 was paid by the Tenant in addition to the payment of first and last month rent.

In the hearing the Landlords testified that the Tenant did not move-out on August 1, 2017, as required in the tenancy agreement, nor did the Tenant pay any rent for August, 2017. As a result, the Landlords testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) was served on the Tenant. In addition to this, the landlords testified that the Tenant remains in the rental unit and now

owes rent for September, 2017. However, the Landlords testified that at this time, they are only seeking an Order of Possession.

The 10 Day Notice in the documentary evidence before me, dated August 2, 2017, indicates that it was served on the Tenant by mail on August 2, 2017, and has an effective vacancy date of August 17, 2017. The 10 Day Notice does not indicate an outstanding rent amount or the date on which any outstanding amount was due. In the hearing the Landlords testified that the 10 Day Notice was sent by registered mail on August 2, 2017, and provided the registered mail receipt as well as a print-out from the Canada Post website in the documentary evidence before me.

Analysis

Section 44 of the *Act* states the following in regards to how a tenancy ends:

How a tenancy ends

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [*tenant's notice*];

(i.1) section 45.1 [*tenant's notice: family violence or long-term care*];

(ii) section 46 [*landlord's notice: non-payment of rent*];

(iii) section 47 [*landlord's notice: cause*];

(iv) section 48 [*landlord's notice: end of employment*];

(v) section 49 [*landlord's notice: landlord's use of property*];

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Based on the oral testimony of the Landlords and the documentary evidence before me, I find that the tenancy agreement between the Tenant and the Landlord was for a fixed-term and that required the Tenant vacate the rental unit on August 1, 2017, the end date specified as the end of the tenancy. In the absence of any evidence that the parties entered into a new tenancy agreement I find the tenant must vacate the rental unit, pursuant to section 44(b) of that *Act*.

Section 55 of the *Act* states the following in regards to an Order of Possession for a Landlord:

Order of possession for the landlord

55 (2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(c) 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;

I have already found above that the tenancy agreement is a fixed-term tenancy agreement that required the Tenant to vacate the rental unit on August 1, 2017. As a result, I find that the Landlord is entitled to an Order of Possession pursuant to section 55(c) of the *Act*.

As I have already found above that the tenancy is ended and the Landlord is entitled to an Order of Possession, I find that I do not need to address any of the other issues noted in the by the Landlord in the application; and I have therefore made no findings of fact or law with regards these issues.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: September 21, 2017

Residential Tenancy Branch