# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

<u>Dispute Codes</u>      FF MNR OPM

<u>Introduction</u>

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

- an order of possession based on a mutual agreement to end tenancy as per, section 55(2)(d);
- a monetary order for unpaid rent pursuant to section 67;and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The landlord A.D., her agent, C.S. ("the landlord") and the tenant all attended the hearing. Agent, C.S. explained that he would be presenting submissions on behalf of the landlord A.D., because she struggled with the English language. All parties present were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

This application dealt with the landlord's application for dispute resolution for an order of possession based on a Mutual Agreement to End a Tenancy ("Mutual Agreement") signed between Landlord A.D. and Tenant P.H. on July 2, 2017.

The tenant acknowledged receiving the landlord's application for dispute resolution and evidentiary package after it was posted on his door on August 10, 2017. Pursuant to sections 88 & 89 of the *Act*, the tenant is found to have been served with the landlord's application and evidentiary package. No evidence was submitted to the hearing by the tenant.

<u>Issue(s) to be Decided</u>

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Can the landlord recover the filing fee?

Background and Evidence

Testimony provided at the hearing by the landlord showed that this tenancy began in February 2016. Rent was $800.00 per month, and a security deposit of $400.00 collected at the outset of the tenancy, continues to be held by the landlord.

The landlord explained that parties had signed a Mutual Agreement to End Tenancy on July 2, 2017 which stated that the tenancy was to end at 12:00 A.M. on August 1, 2017. A copy of this document was submitted to the hearing as part of the landlord's evidentiary package. The tenant acknowledged signing this document; however, he claimed that the document he signed was blank and he did not actually consent to any of the information contained in the Mutual Agreement to End Tenancy. The landlord disputed this statement, arguing that the tenant was a licensed real estate agent who was well versed in tenancy matters and would not conceivably sign a blank document clearly entitled Mutual Agreement to End Tenancy. Furthermore, the landlord explained that in August 2016 she had already obtained an Order of Possession after a Direct Request Application was submitted to the *Residential Tenancy Branch;* however, she had chosen not to enforce this as the tenant had informed her that he would be moving from the premises.

The tenant argued that the landlord's own evidence demonstrated that he did not sign the Mutual Agreement to End Tenancy. The tenant directed my attention to a summary and statement submitted to the hearing as part of the landlord's evidentiary package. This document says, "A few days later, A.D. had a conversation with P.H. P.H. said to A.D., when he signed the document, the paper was blank and he discussed about paying rent to A.D. in the next few days." The landlord explained that this note was merely a record of a conversation that had transpired between the parties following the service of the Notice of Hearing and was not a statement of fact.

In addition to an Order of Possession, the landlord sought a monetary award of $2,400.00 for unpaid rent for the months of August, September and October 2017. The landlord explained that the tenant attempted to pay the rent, but it had been rejected by her because the tenant had refused to sign a receipt which said that rent was accepted "for use and occupancy only."

Analysis

Section 44 of the *Act* provides that, "A tenancy ends only if one of the following applies…(c) the landlord and tenant agree in writing to end the tenancy."

Section 52 of the *Act* describes what must be present in the form and content of a notice to end tenancy. It says - In order to be effective, a notice to end a tenancy must be in writing and must:

    (a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) state the grounds for ending the tenancy

(e) when given by the landlord, be in the approved form.

The tenant presented little evidence other than his oral testimony that the Mutual Agreement to End Tenancy signed between himself and the landlord was blank at the time of its signing and hence did not meet the requirements of section 44 of the *Act*. The tenant argued that a 'Summary and Statement' contained in the landlord's evidentiary package was evidence that the document which he signed was blank. He noted this evidence said, "A few days later, A.D. had a conversation with P.H. P.H. said to A.D., when he signed the document, the paper was blank and he discussed about paying rent to A.D. in the next few days." The landlord argued that these were simply notes of the conversation and not a summary of facts.

In *R vs. Parent*, 2000 BCPC 11 the issue of resolving differences in the accounts of parties to a hearing is explored. The judge in that matter reached his conclusion by assessing the credibility of all the witnesses, examining all the evidence and applying the law. He noted that, in assessing credibility, courts have recognized a number of factors as helpful. These include:

1) the witness' ability to observe the event, record them in memory, recall and describe them accurately,

2) the external consistency of the evidence. Is the testimony consistent with other, independent evidence, which is accepted?

3) its internal consistency. Does the witness' evidence change during direct examination and cross-examination?

4) the existence of prior inconsistent statements or previous occasions on which the witness has been untruthful

5) the "sense" of the evidence. When weighted with common sense, does it seem impossible or unlikely? Or does it "make sense"?

6) motives to lie or mislead the court: bias, prejudice, or advantage.

7) the attitude and demeanour of the witness…in assessing demeanour a judge should consider all possible explanations for the witness' attitude, and be sensitive to individual and cultural factors which may affect demeanour.

The landlord and the tenant differed on whether the Mutual Agreement to End Tenancy was blank when signed or was, as the landlord testified, dated to end August 1, 2017. It defies common sense to think that a licensed real estate agent would knowingly sign a standard document entitled Mutual Agreement to End Tenancy when it was blank.

For this reason, I find that the Mutual Agreement to End Tenancy signed by the parties on July 2, 2017 to be valid, and this tenancy to have ended on August 1, 2017.

In addition to an Order of Possession, the landlord had applied for a monetary award for unpaid rent. Testimony was presented at the hearing by both parties that the tenant had attempted to pay the rent for August, September and October 2017 but that it had been refused by the landlord as the tenant would not sign a receipt that noted it was *for use and occupancy only*.

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 directly 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 entitlement to a claim for a monetary award.

While I acknowledge that rent was refused by the landlord when the tenant attempted to pay it, evidence and testimony were presented at the hearing by the landlord that this was done so because the tenant refused to sign a receipt for *use and occupancy only*. This is a reasonable approach to adopt as the tenancy had ended and the landlord did not wish to extend it by accepting rent. I find that rent for August, September and October 2017 remains outstanding and is due under the *Act* as the tenant has continued to occupy the rental unit following the conclusion of the tenancy.

The landlord is entitled to the entirety of his monetary order. Using the offsetting provisions contained in section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit as partial relief against the monetary award.

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

Conclusion

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. The landlord is provided with formal Orders in the above terms. Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

I make a Monetary Order of $2,100.00 in favour of the landlord as follows:

| Item | Amount |
|---|---|
| Unpaid rent for August 2017 | $800.00 |
| Unpaid rent for September 2017 | 800.00 |
| Unpaid rent for October 2017 | 800.00 |
| Less Security Deposit | (-400.00) |
| Return of Filing Fee | 100.00 |
| **Total =** | $2,100.00 |

Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: October 5, 2017

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Residential Tenancy Branch