



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding UNIQUE REAL ESTATE ACCOMMODATIONS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB, FFL

Introduction

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

- an Order of Possession based on a breach of a material term of the Residential Tenancy Agreement (the Agreement) pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

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.

As Tenant RS (the tenant) confirmed that the tenants received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on March 17, 2018, I find that the tenants were duly served with this package in accordance with section 89 of the *Act*. As both parties confirmed that they received copies of one another's written evidence packages, I find that they were duly served with these packages in accordance with section 88 of the *Act*.

Preliminary Issue – Landlord's Attempt to Amend this Application

At the commencement of this hearing, Landlord representative AO (the landlord) asserted that the landlord's request for a monetary award for damages and losses of \$5,825.00 was also properly before me. The landlord testified that they sent a copy of this requested amendment to the original application by sending a Monetary Order Worksheet outlining the requested monetary award as part of their evidence to the tenants on April 12, 2018 and to the Residential Tenancy Branch (the RTB) by fax on

April 13, 2018. The tenant confirmed that the tenants received this written evidence from the landlord.

At the hearing, I noted that the landlord had not made any formal amendment to their original application. Including a monetary request as part of an applicant's written evidence package does not enable an applicant to add an unrelated claim to the original claim, which only sought an Order of Possession and the recovery of the landlord's \$100.00 filing fee from the tenants. In addition to the late provision of this information to the tenants, I note that Rule 2.3 of the RTB's Rules of Procedure specifies that claims made in the application must be related to one another. This Rule provides me with the discretion to dismiss unrelated claims with or without leave to reapply.

In this case, I find that no formal amendment to the original application was made by the landlord and that the additional items listed in the landlord's request to add a monetary application is unrelated to the original claim for an order of possession. At the hearing, I dismissed the landlord's request to amend the original application to add a monetary request for damages and losses to the original application with leave to reapply.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

On February 10, 2017, the parties signed an Agreement to initiate a six-month fixed term tenancy that was to run from March 2, 2017 until September 1, 2017. Monthly rent was set at \$3,200.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$1,600.00 security deposit and \$1,600.00 pet damage deposit both paid on or about February 10, 2017.

This tenancy was extended by the parties for the month of September 2017. The parties signed a new Agreement on August 20 and 21, 2017 for a third fixed term tenancy that is to cover the period from October 2, 2017 until April 1, 2018.

For each of the three fixed term Agreements, both parties gave their written agreement that the fixed term tenancies ended on the last day of the tenancy and the tenants would be vacating the rental unit at that time, unless they entered into a new Agreement.

The tenants provided written evidence that they advised the landlords that changes to the *Act* and to the *Regulation* created pursuant to the *Act* in late 2017 negated their agreement to vacate the rental unit as of the end of the fixed term tenancy. They maintained that these changes extended the fixed term tenancy entered into before the changes took effect to a periodic tenancy as of April 1, 2018, the end date specified on the third fixed term tenancy Agreement.

The landlord's application for an Order of Possession for breach of a material term of the third fixed term tenancy Agreement was based on the original wording of that Agreement. They sought an end to this tenancy on the basis of this alleged breach.

The parties agreed that since the landlord initiated the application for dispute resolution, the tenants issued their own written notice to end this tenancy on May 1, 2018. The landlord confirmed that they received this notice from the tenants by fax on or about March 28, 2018.

The parties agreed that the tenants have provided the landlord with a \$3,200.00 cheque for their rent for the month of April 2018. The landlord gave undisputed sworn testimony that this cheque had not yet been cashed, pending the outcome of this hearing.

Analysis

Since the tenants have already issued their own notice to end this tenancy on May 1, 2018 and based on the timing of this hearing, I advised the parties that the landlord's original application for an Order of Possession for the breach of a material term of the Agreement had become a moot point.

In accordance with section 55(2) of the *Act*, I issue the landlord an Order of Possession in the landlord's favour to take effect on May 1, 2018, the stated date for the tenants' end to this tenancy.

I order the landlord to cash the tenants' \$3,200.00 cheque, which is already in the landlord's possession.

Conclusion

I dismiss the landlord's application as the issue before me has become a moot point based on the tenants' subsequent notice to end this tenancy by May 1, 2018.

The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on May 1, 2018. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to cash the tenants' \$3,200.00 cheque currently in the landlord's possession.

The landlord's attempted amendment to the original application is dismissed. The landlord remains at liberty to initiate a new application for the outcomes sought in that amendment.

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: April 26, 2018

Residential Tenancy Branch