



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPN FFL
For the tenant: OLC PSF LRE AAT

Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution (“applications”) under the *Residential Tenancy Act* (“Act”). The landlord applied for an order of possession based on the tenant’s written notice to end tenancy and to recover the cost of the filing fee. The tenant applied for an order directing the landlord to comply with the Act, regulation or tenancy agreement, to suspend or set conditions on the landlord’s right to enter the rental unit, for an order directing the landlord to provide services or facilities required by law or the tenancy agreement, and for an order to provide access to the rental unit for the tenant or the tenant’s guests.

The landlord and the tenant, and a person named JS who was identified as a co-tenant yet was not listed as a party to this dispute or listed on the tenancy agreement, attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

A witness for the landlord (“witness”) also attended the hearing but was not called to testify during the hearing.

During the hearing, the tenant testified that she tore up her paperwork and as a result, did not have it in front of her during the hearing. The tenant was advised that her decision to tear up her paperwork was a decision she made was not the fault of the landlord and that the hearing would continue regardless. I find the parties were sufficiently served as both parties confirmed they

had received and reviewed the application and evidence prior to the tenant making the decision to tear up her paperwork.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Should the 10 Day Notice be cancelled or upheld under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- Is either party entitled to the recovery of the cost of the filing fee under the *Act*?
- If the tenancy is ending, should the tenant's application be dismissed, if not, should it be dismissed with leave?

Background and Evidence

A copy of the written tenancy agreement was submitted in evidence. A month to month tenancy began on March 1, 2018 and monthly rent was \$850.00 per month and due on the first day of each month. The tenant paid a security deposit of \$425.00 at the start of the tenancy which the landlord continues to hold. The tenant continues to occupy the rental unit. The landlord is seeking an order of possession based on the tenant given her one month notice to end tenancy dated April 1, 2018. The tenant confirmed that the effective date of her vacating the rental unit was April 30, 2018 when she served the landlord with her one-month written notice to vacate the rental unit ("written notice").

The tenant claims that after giving her written notice the parties entered into another written agreement which the landlord vehemently denied. The tenant failed to provide a copy of any such agreement and the landlord testified that no copy exists as there was no written agreement and that all the landlord has is the tenant's written notice dated April 1, 2018 that she would be moving out which the parties agreed was for April 30, 2018.

The landlord testified that the tenants have not paid any money for use and occupancy for May 2018 and as a result, the landlord is seeking a two (2) day order of possession as the tenant is overholding. The tenants claim they paid money for May 2018 but failed to provide any supporting documentation such as banking statements or a receipt. The landlord stated that no receipt would exist as no money has been paid by the tenants for May 2018.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

Tenant's notice to end tenancy – Section 45(1) of the *Act* applies and states:

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

[My emphasis added]

Based on the above, and taking into account that the tenant's notice was in writing, I find the tenancy ended on April 30, 2018. I find the landlord had the right to rely on the tenant's written notice that the tenancy was ending April 30, 2018 when she was served on April 1, 2018 with the tenant's written notice. The tenant even confirmed that she intended the end of tenancy date to be April 30, 2018. I find the tenant failed to provide sufficient evidence that there was any written agreement after the tenant's written notice was served on the landlord. In other words, I find there is insufficient evidence before me to support that any written agreement was made to continue the tenancy. Therefore, when one tenant gives notice to end the tenancy, it applies to all tenants and the tenancy ended for all tenants effective April 30, 2018.

Order of possession – Based on the evidence before me, I find the tenant has provide insufficient evidence to support that any money has been paid for use and occupancy for May 2018. Therefore, I grant the landlord an order of possession **effective two (2) days** after service on the tenant. This order of possession applies to all tenants and occupants.

Based on the above, I dismiss the tenant's application without leave to reapply as it is now moot as the tenancy ended on April 30, 2018. I do not find it necessary to consider the merits of the tenant's application.

As the landlord's application was successful, I grant the landlord **\$100.00** for the recovery of the cost of the filing fee pursuant to section 72 of the *Act*. **I authorize** the landlord to retain **\$100.00** from the tenant's \$425.00 security deposit which has accrued no interest, in full satisfaction of the landlord's recovery of the cost of the filing fee. I find the tenant's security deposit is now \$325.00 as a result.

Conclusion

The tenant's application is dismissed, without leave to reapply, as indicated above.

The landlord's application is successful. I find the tenancy ended on April 30, 2018. The landlord has been granted an order of possession effective two (2) days after service on the tenant. The landlord must serve the tenant with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlord has been authorized to retain \$100.00 from the tenant's \$425.00 security deposit in full satisfaction of the landlord's recovery of the cost of the filing fee.

I find the tenant's security deposit is now \$325.00 as a result.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 15, 2018

Residential Tenancy Branch