



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, FFL

Introduction

This decision is in respect of the landlords' application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The landlords seek the following relief under sections 55 and 72 of the Act: (1) an order of possession based on a mutual agreement to end a tenancy; and (2) a monetary order for recovery of the filing fee.

A dispute resolution hearing was convened at 11:00 a.m. on October 26, 2018. The landlords' legal counsel and the tenant attended the hearing, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any issues in respect of service of documents.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issue of this application are considered in my decision.

Issues

1. Are the landlords entitled to an order of possession based on a mutual agreement to end a tenancy?
2. Are the landlords entitled to a monetary order for recovery of the filing fee?

Background and Evidence

Counsel for the landlords testified that the tenancy commenced on December 19, 2008, and the tenancy is a month to month arrangement. Based on a document that the tenant submitted into evidence, monthly rent was initially \$1,450.00, and is currently

\$1,752.00. The document reflects rent owing in the amount of \$178,266.96 as of today's date. Counsel testified and confirmed that this is the current amount of rent, some utilities and interest, in arrears.

Counsel further testified that the landlords and the tenant agreed in writing to end the tenancy. Submitted into evidence is a copy of the written agreement titled "Termination of Tenancy Agreement," which was signed by all parties (counsel noted that the agreement was signed sometime in March 2018), and which indicates an end of tenancy date of August 31, 2018. The tenant continues to reside in the rental unit despite August 31, 2018 having long since passed and continues not to pay rent.

In her submissions, counsel pointed me to section 55(2)(d) of the Act, to which I shall refer in my analysis.

The tenant testified that he signed the written agreement to end the tenancy, and indeed sought advice from his lawyer who advised him to sign it.

While the tenant did not dispute that he signed a mutual agreement to end the tenancy, he testified at length about investors, bank issues, "putting this thing together" (he was rather unclear as to what "this thing" is), and about how he gave the landlords many shares in his company.

He further commented that the shares that he gave to the landlords have "significant value" and that these shares will eventually buy the landlords out over and above just the amount of rent currently owing. Indeed, by the end of the first quarter of 2019, the tenant expects, after he has "put together a heckuva package," the shares cashed out will be worth well over \$1,400,000.00.

In his closing submissions, the tenant noted that he has personal injuries such that he would be unable to move out of the rental unit in any event, until his son, returns in mid-December 2018.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Subsection 55(2)(d) of the Act states that a landlord may request an order of possession of a rental unit when the landlord and tenant have agreed in writing that the tenancy is ended.

In this case, counsel for the landlords provided more than sufficient evidence proving that the landlords and the tenant agreed in writing that the tenancy would end on August 31, 2018. Indeed, the tenant testified and confirmed that he signed the written agreement that would end the tenancy on the above-noted date.

Taking into consideration the documentary evidence and the undisputed testimony of the parties presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have established that they are entitled to an order of possession of the rental unit.

As the landlords were successful in their application, I grant them a monetary order in the amount of \$100.00 for recovery of the filing fee.

Conclusion

I hereby grant the landlords an order of possession, which must be served on the tenant and is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I hereby grant the landlords a monetary order in the amount of \$100.00, which must be served on the tenant. The order may be filed in, and enforced as an order of, the Provincial 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 Act.

Dated: October 26, 2018

Residential Tenancy Branch