



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held on October 30, 2018. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a mutual agreement to end tenancy

One of the Landlords attended the hearing. The Tenant attended the hearing with her advocate. Both parties confirmed receipt of each other's documentary evidence.

In the written submission from the Tenant's advocate, he stated that he would like the Tenant's future application for other issues be heard at the same time as this claim. While I have considered this request, I find they are not sufficiently related, as to hear them at the same time. I decline the Tenant's request to hear all of the issues at the same time. Some of the items in the future application may be moot if the tenancy ends, and my decision in this hearing will focus on whether the tenancy will continue or end, based on the mutual agreement to end tenancy.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written 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.

Issues to be Decided

- Is the Landlord entitled to an order of possession based on a mutual agreement to end tenancy?

Background and Evidence

The Tenant's advocate, as re-iterated in the Tenant's statutory declaration, stated that the Tenant signed a mutual agreement to end tenancy after receiving an eviction notice the previous month. The Tenant stated that she felt pressured to sign it, and should have consulted with her advocate before signing it, but didn't. The Tenant expressed that she has difficulty understanding written documentation, and now regrets signing the mutual agreement to end tenancy. The Tenant stated that she is having a tough time finding alternative housing.

The Tenant's advocate stated that the Landlord gave an improper notice to end tenancy on August 7, 2018. The advocate stated that the Landlord had asked to enter the rental unit leading up to this notice, and when the Landlord changed the date and time that she would need access, the Tenant took issue with the alternate time proposed by the Landlord. The Landlord then issued a handwritten notice to end tenancy because of the issue with access to the rental unit.

The Landlord testified that he had discussions with the Tenant about ending the tenancy, and when he went to the local government office, he was told to use the Mutual Agreement to End Tenancy form. Subsequently, the Landlord stated that he brought this back to the Tenant, and they mutually agreed that the tenancy would end.

The Landlords provided a copy of a mutual agreement to end tenancy (the "agreement"), signed and dated August 17, 2018. The agreement specifies that the Tenant agreed to vacate the rental unit by 6:00 pm on August 31, 2018. Both the Landlord and the Tenant signed this written agreement.

The Landlords testified that the Tenant did not move out as specified by the agreement, and the Landlord stated that the Tenant cancelled her rent payments despite still living in the rental unit. The Tenant stated that she wishes she could find another place to live, but housing stock is in short supply, so she hasn't been able to move out.

Analysis

Section 44 of the Act allows for a tenancy to end by mutual agreement of the parties to the tenancy as long as the agreement is in writing.

Based on the testimony and documentary evidence, and on a balance of probabilities, I find there is sufficient evidence to demonstrate that the parties entered into a mutual agreement to end the tenancy, effective August 31, 2018.

I note the Tenant's advocate has stated that the Tenant was under pressure to sign the agreement. However, I note that the Tenant has an advocate assisting her with her tenancy matters, and she could have consulted him prior to signing the mutual agreement to end tenancy. I acknowledge that the Tenant stated that she has difficulty understanding written materials. I also note that there appears to have been some issues which predate this mutual agreement, earlier in the month (regarding access to the unit). The Tenant expressed in the hearing that she would move out of the rental unit if there was another place to go. It appears as though the lack of alternative housing has impacted the Tenant's satisfaction with her mutual agreement to end the tenancy, as she has nowhere else to go. I do not find the evidence before me sufficiently shows that the Tenant lacked capacity to sign the mutual agreement with the Landlord nor does it sufficiently demonstrate that the Tenant was under duress or did not understand what she was agreeing to. I note the Tenant expressed in the hearing that she would move out of the rental unit if there was another place to go. It appears as though the lack of alternative housing has impacted the Tenant's satisfaction with her mutual agreement to end the tenancy, as she has nowhere else to go.

After reviewing the evidence and testimony, I find the Landlords are entitled to an order of possession based on the mutual agreement to end tenancy. This order of possession will be effective two (2) days after it is served on the Tenant.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was successful in this hearing, I also order the Tenant to repay the \$100.00 fee the Landlord paid to make the application for dispute resolution.

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$100.00** comprised of the filing fee. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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 31, 2018

Residential Tenancy Branch