



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPN

Introduction

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

- an Order of Possession for cause, pursuant to sections 47 and 55; and
- an Order of Possession for a tenant's notice to end tenancy, pursuant to section 45.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's agent and I were the only ones who had called into this teleconference.

The landlord's agent testified that the tenant was personally served the notice of dispute resolution package on October 27, 2018. I find that the tenant was deemed served with this package on October 27, 2018, in accordance with section 89 of the *Act*.

Issue to be Decided

1. Is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord's agent, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord's agent provided undisputed testimony that this tenancy began on February 1, 2018 and that the tenant has informed the landlord that he has moved out. The landlord testified that he is still seeking an Order of Possession against the tenant to ensure that the tenant has actually moved out and will not move back in.

The landlord's agent testified that the tenant's roommate is still residing at the subject rental property. The landlord's agent testified that the tenant's roommate has signed a tenancy agreement with the landlord that is separate and apart from the tenancy agreement the tenant signed with the landlord. The landlord's agent testified that he is seeking an Order of Possession against all occupants of the subject rental property, not just against the tenant.

The landlord's agent provided the following undisputed testimony. Monthly rent in the amount of \$1,200.00 is payable on the first day of each month. A security deposit of \$600.00 and a pet damage deposit of \$600.00 were paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord's agent testified that on October 1, 2018 the tenant was personally served with a One Month Notice to End Tenancy for Cause with an effective date of October 31, 2018 (the "One Month Notice"). The landlord's agent testified that the landlord and the tenant signed a Mutual Agreement to End Tenancy on October 27, 2018 with an effective date of November 30, 2018 (the "Mutual Agreement").

The landlord's agent testified that the landlord and the tenant signed the Mutual Agreement with the understanding that the Mutual Agreement superseded the One Month Notice and that the tenancy would end pursuant to the Mutual Agreement and not the One Month Notice. The Mutual Agreement and the One Month Notice were entered into evidence.

Analysis

Section 44(1)(c) states that a tenancy ends if the landlord and tenant agree in writing to end the tenancy.

I find that the landlord and the tenant entered into the Mutual Agreement pursuant to section 44 of the *Act*. I find that since the Mutual Agreement was entered into after the One Month Notice and the landlord's agent testified that the intent of the parties was to end the tenancy pursuant to the Mutual Agreement and not the One Month Notice, the One Month Notice is cancelled.

Pursuant to section 44 of the *Act* and the Mutual Agreement, the tenancy between the tenant and the landlord ended on November 30, 2018. Therefore, the landlord is therefore entitled to a two-day Order of Possession against the tenant.

I find that the Mutual Agreement is enforceable only against the parties who signed it, that being the landlord and the tenant. I decline to award an Order of Possession against a person who is not a party to these proceedings and did not sign the Mutual Agreement.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme 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 *Residential Tenancy Act*.

Dated: December 03, 2018

Residential Tenancy Branch