



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, MNRL

Introduction

This hearing dealt with the Landlord's Application filed under the *Residential Tenancy Act*, (the "*Act*"), for an order of possession pursuant to section 55 of the *Act*, and for a monetary order to recover unpaid rent. The matter was set for a conference call.

The Landlord attended the hearing and was affirmed to be truthful in his testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that the documents were sent by registered mail on January 11, 2019, a Canada post tracking number was provided as evidence of service. Section 90 of the *Act* determines that a document served in this manner is deemed to have been served five days later. I find that the Tenant had been duly served in accordance with the *Act*.

The Landlord was provided with the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

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.

Preliminary Matter

During the hearing, the Landlord withdrew his claim for a monetary order to recover unpaid rent. I will continue in this hearing on the remaining items claimed on the Landlord's application.

Issue to be Decided

- Is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement into documentary evidence that showed that this tenancy began on November 1, 2016, and that this was a subsidized housing unit, and the Tenant paid 30% of the market value for rent for this unit each month.

The Landlord testified that he and the Tenant signed a mutual agreement to end the tenancy on September 1, 2018. The agreement ended the tenancy as of December 31, 2018. The Landlord provided a copy of the mutual agreement into documentary evidence.

The Landlord testified that the Tenant has not moved out in accordance with their mutual agreement to end the tenancy. The Landlord is requesting an Order of Possession for the rental unit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 44(1) of the *Act* provides the grounds in which a landlord and a tenant are permitted to end a tenancy.

How a tenancy ends

- 44** (1) A tenancy ends only if one or more of the following applies:
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 [*tenant's notice*];
 - (i.1) section 45.1 [*tenant's notice: family violence or long-term care*];
 - (ii) section 46 [*landlord's notice: non-payment of rent*];

- (iii) section 47 [*landlord's notice: cause*];
- (iv) section 48 [*landlord's notice: end of employment*];
- (v) section 49 [*landlord's notice: landlord's use of property*];
- (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
- (vii) section 50 [*tenant may end tenancy early*];
- (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended;
- (g) the tenancy agreement is a sublease agreement.

I have reviewed the mutual agreement to end the tenancy, entered into documentary evidence by the Landlord, and I find that the Landlord and Tenant did agree in writing to end this tenancy as of December 31, 2018.

Section 55(2) of the *Act* states that a landlord may request an order of possession when they have entered into a written agreement to end the tenancy with the tenant and the tenant has not opposed the landlord's request for the order of possession.

Order of possession for the landlord

55 (2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

- (a) a notice to end the tenancy has been given by the tenant;
- (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;
- (c) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
- (c.1) the tenancy agreement is a sublease agreement;
- (d) the landlord and tenant have agreed in writing that the tenancy is ended.

In this case, I find that the Tenant has not opposed the Landlord's request for an Order of Possession. Therefore, I grant the Landlord an order of possession, pursuant to section 55 of the *Act*, effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that the costs of such enforcement are recoverable from the tenant.

Conclusion

I grant an **Order of Possession** to the Landlord effective **two days** after service of this Order 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: February 15, 2019

Residential Tenancy Branch