



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN, FFL

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the Act) seeking:

- an Order of Possession, based on the tenant's notice to end tenancy, pursuant to sections 45 and 55 of the Act;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72 of the Act.

The landlord "GT" (the landlord) attended the hearing by way of conference call. Neither respondent attended this hearing, although I waited until 9:45 A.M. in order to enable the respondents to connect with this teleconference hearing scheduled for 9:30 A.M. The landlord attending the hearing was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that on February 04, 2019, the tenants were served by way of Registered Mail the Landlord's Application for Dispute Resolution hearing package ("dispute resolution hearing package"), which included the landlords' evidence. The Canada Post tracking numbers for the respective mailed items sent to each respondent were provided as evidence during the hearing.

Section 90 of the Act determines that a document served by registered mail is deemed to have been received five days after service. As such, in accordance with sections 89 and 90 of the Act, I find that the respondents have been deemed served with the dispute resolution hearing package, and accompanying evidence, on February 09, 2019, the fifth day after their registered mailing.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 45 and 55 of the Act?

Are the landlords entitled to recover the filing fee for this application pursuant to section 72 of the Act?

Background and Evidence

While I have considered all documentary evidence submitted and all oral testimony of the landlord, I will only refer to the evidence and facts which I find relevant in this decision. Not all details of the submissions and / or arguments of the landlord are reproduced here. The principal aspects of the landlords' claim and my findings around it are set out below. The landlord provided undisputed evidence at this hearing, as the tenants did not attend.

The landlord testified that he entered into a tenancy with the tenant "BF" only. The landlord provided that the tenancy began on October 01, 2017. The monthly rent was determined to be due on the first day of each month. The monthly rent was set at \$1,500.00 and remained at that amount. The landlord states that the tenant BF provided a security deposit in the amount of \$750.00 which continues to be held by the landlord. The landlord provided as evidence a copy of a written tenancy agreement which confirms the details provided orally by the landlord.

The landlord testified that the written tenancy agreement depicted that BF was the sole tenant, and that only BF signed the tenancy agreement.

The landlord stated that BF's girlfriend, the respondent "VA", had been an approved additional occupant since the onset of the tenancy. The landlord stated that the second respondent on the application for dispute resolution, identified as bearing the initials "VA", is not a tenant, and had been recognized only as an approved occupant during the tenancy.

The landlord stated that he did not amend the tenancy agreement to include VA as a second tenant, and that the parties did not verbally, or otherwise, amend the tenancy or undertake any action to expressly or tacitly accept VA as a tenant.

The landlord testified that the relationship between BF and VA had become strained, and that BF eventually decided to end the tenancy.

The landlord testified that on December 29, 2018, the tenant BF served written notice which conveyed his intention to end the periodic tenancy by providing a tenant's one month notice to end tenancy. The landlord testified that he received the notice to end tenancy from BF personally on December 29, 2019, and the parties agreed that the tenancy would therefore end on January 31, 2019. The landlord provided a copy of the tenant's notice as evidence.

The landlord asserted that after receiving the tenant's notice to end tenancy, he attended the rental unit and spoke with the BF and VA.

The landlord testified that while speaking with the BF, all parties acknowledged that the notice provided by the tenant BF was understood to have the effect of ending the tenancy and was not meant as a notice to the landlord to convey that BF was vacating the rental unit, with the intention that the tenancy would continue with VA being the sole tenant under the tenancy.

The landlord testified that the tenant BF vacated the rental unit on January 29, 2019. The landlord stated that the occupant VA had initially verbally affirmed her intention to vacate the rental unit by January 31, 2019. The landlord testified that after the date by which VA had promised to vacate the unit had passed, she amended her intentions and conveyed that she would vacate the rental unit by February 15, 2019, thereby continuing to occupy the unit beyond the end of tenancy date of January 31, 2019 and without consent of the landlord.

The landlord testified that VA subsequently began threatening to not leave, and also conveyed that she would unilaterally extend her occupancy beyond February 15, 2019 without the landlord's consent. The landlord provided copies of text message correspondence as evidence.

The landlord testified that he seeks an order of possession pursuant to the notice to end tenancy provided by BF. The landlord testified that the occupant VA has not provided any payment for the occupancy of the unit for the months of February 2019 and March 2019.

Analysis

Section 45 of the Act permits a tenant to end a period tenancy by providing notice, in writing, to the landlord. Section 45(1) provides, in part, the following:

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.

I find that the December 29, 2018 notice to end tenancy provided by the tenant BF was issued in accordance with section 45 of the Act. I also find that the December 29, 2018 notice to end tenancy adheres to the criteria for the form and content of a tenant's notice to end tenancy, as set out in section 52 of the Act.

I find that the tenant BF had leave to end the periodic tenancy by providing a notice pursuant to section 45 of the Act. Therefore, the December 29, 2018 notice to end tenancy provided by the tenant BF had the effect of ending the tenancy on January 31, 2019, which thereby required all tenants and occupants to vacate the rental unit by that date. As this has not occurred, I find that it is open to the landlord to seek an order of possession on the basis of the tenant's notice to end tenancy, dated December 29, 2018.

Section 55 of the Act provides that a landlord may request an Order of Possession on the basis of a tenant's notice to end tenancy. Section 55 of the Act provides, in part, the following:

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;

Based on the foregoing, I find that the landlord is entitled to an Order of Possession based on the tenant's notice dated December 29, 2018. Therefore, I grant the landlord an Order of Possession based on the December 29, 2018 notice to end tenancy provided by the tenant BF.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 application filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant the landlords a Monetary Order in the amount of **\$100.00**. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: March 11, 2019

Residential Tenancy Branch