



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AF PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPN, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the Residential Tenancy Act, (the “*Act*”) to an order of possession to enforce the Tenants’ Notice to end the tenancy (the “*Notice*”) issued to the Landlord on March 29, 2019, and to recover the filing fee for this application. The matter was set for a conference call.

An Agent for the Landlord (the “Landlord”) attended the hearing and was affirmed to be truthful in her testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* 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 served to the Tenant in person, on May 10, 2019. I find that the Tenant had been duly served in accordance with sections 89 and 90 of the *Act*.

The Landlord was provided with the opportunity to present her 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

Issues to be Decided

- Is the Landlord entitled to an order of possession, pursuant to section 55 of the *Act*?
- Is the Landlord entitled to the recovery of the filing fee for this application?

Background and Evidence

The Landlord testified that the tenancy began on November 15, 2018, as a month-to-month tenancy. Rent in the amount of \$1,400.00 is to be paid by the first day of each month, and that the Tenants paid the Landlord a \$700.00 security deposit. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that one of the Tenants to the tenancy agreement gave her written notice to end the tenancy on March 29, 2019 and that the Tenant who gave the written notice moved out in accordance with that notice on April 30, 2019 but that the other Tenant has refused to leave and has not paid any rent since. The Landlord submitted a copy of the Tenant's Notice to end the tenancy and a copy of a mutual agreement to end the tenancy into documentary evidence.

The Landlord testified that the remaining Tenant had not moved out in accordance with the Notice and that she is seeking an order of possession.

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities:

I have reviewed the tenancy agreement for this tenancy, and I find that the Landlord and two co-tenants entered into a periodic (month-to-month) tenancy agreement that started on November 15, 2018.

Section 45 of the *Act* permits a tenant to end a periodic tenancy by giving the landlord one month written notice.

Tenant's notice

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 have reviewed the Notice to end this tenancy, and I find that one of the Tenants to this co-tenancy issued written Notice to the Landlord on March 29, 2019, to end this tenancy in accordance with the *Act*.

The Residential Tenancy Policy Guideline #13 Rights and Responsibilities of Co-tenants provided guidance on co-tenancy states the following:

“Where co-tenants have entered into a periodic tenancy, and one tenant moves out, If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants.”

As I have already found the Notice issued by one of these co-tenants to be valid, I find that both of the Tenants to this tenancy agreement should have moved out of the rental unit on April 30, 2019. However, in this case, only one of the Tenants to the tenancy agreement moved out.

Section 55(2a) of the *Act* states that a landlord may request an order of possession if a tenant has served them with a notice to end the tenancy and the Tenant has failed to move out in accordance with that notice.

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.*

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55a of the *Act*, effective not later than 2 days after service of this Order upon 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.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for his application. I grant permission to the Landlord to keep \$100.00 from the security deposit in full satisfaction of this award.

Conclusion

I grant an **Order of Possession** to the Landlord, effective not later than **2 days** after service of this Order upon the Tenant. The Tenant must be served with this Order. 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: June 25, 2019

Residential Tenancy Branch