



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on May 3, 2019 (the "Application"). 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 and;
- an order granting recovery of the filing fee.

The Tenant as well as the Landlord's Agent R.G. attended the hearing at the appointed date and time and provided affirmed testimony.

R.G. testified that he served the Application and documentary evidence package to the Tenant in person, shortly after making the Application. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*. The Tenant confirmed that she did not submit any evidence in preparation for the hearing.

The parties were given an 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.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession based on a Mutual Agreement to End Tenancy, pursuant to Section 55 of the *Act*?
2. Is the Landlord entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on or around June of 2010. Currently, the Tenant pays rent in the amount of \$850.00 which is due on the first day of each month to the Landlord. The Tenant paid a security deposit in the amount of \$425.00 which the Landlord continues to hold.

During the hearing, the parties agreed that the Landlord and the Tenant entered into a Mutual Agreement to End Tenancy on April 8, 2019. The parties agreed that the effective vacancy date on the Mutual Agreement to End Tenancy was May 31, 2019. Both parties agreed that they signed the Mutual Agreement to End Tenancy on April 8, 2019. The parties agreed that the Tenant continues to occupy the rental unit. The Landlord is seeking an order of possession.

The Tenant stated that she has not moved out of the rental unit as she needs more time to make arrangements to move. During the hearing, both parties agreed that the tenancy would end no later than 1:00 P.M. on June 28, 2019 and that the Landlord would be provided an order of possession to that effect.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 44 of the Act states that a tenancy ends if the Landlord and Tenant agree in writing to end the tenancy.

According to Section 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 if the landlord and tenant have agreed in writing that the tenancy is ended.

I accept that the parties signed a Mutual Agreement to End the Tenancy and agreed to vacate the rental unit by 5:00 P.M. on May 31, 2019. As this did not occur, the Landlord is seeking an order of possession.

During the hearing, the parties agreed to end the tenancy on or before 1:00 P.M. on June 28, 2019.

As such, I find that the Landlord is entitled to an order of possession effective at 1:00 P.M. on June 28, 2019 after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

As the Tenant did not move out in compliance with the valid Mutual Agreement to End Tenancy, I find that the Landlord has established an entitlement to recover the \$100.00 filing fee, which the Landlord may deduct from the Tenant's security deposit.

Conclusion

The Landlord has been granted an order of possession effective June 28, 2019 at 1:00 P.M. This order must be served to the Tenant as soon as possible, and may be filed in the Supreme Court of British Columbia 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: June 17, 2019

Residential Tenancy Branch