



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT FFT

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (“application”) seeking remedy under the *Residential Tenancy Act* (“*Act*”) by the tenants. The tenants applied for an order of possession for the tenants as the landlords refused to give them the rental unit keys, and to recover the cost of the filing fee.

The tenants, the landlord, and two support people for the landlord MT and CL, attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

The landlord’s evidence was excluded from the hearing as the landlord stated that it was served by email on the tenants, which is not a permitted form of service under the *Act*. The tenants confirmed they did not receive the landlord’s evidence. Although the landlord claimed to have not been served with the tenants’ application, I find that their testimony was inconsistent as the landlord did upload evidence and referenced the tenants’ application. Therefore, I find the landlord was sufficiently served under the *Act*.

Preliminary and Procedural Matter

The parties confirmed their email addresses during the hearing. The decision will be emailed to both parties as a result. Any resulting orders will be emailed to the appropriate party for service on the other party.

Issues to be Decided

- Are the tenants entitled to an order of possession under the *Act*?
- Are the tenants entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the written tenancy agreement was submitted in evidence. A fixed-term tenancy began June 15, 2019 and is scheduled to revert to a month to month tenancy after June 15, 2020. Monthly rent is set at \$1,300.00 per month and is due on the 15th day of each month.

There is no dispute that the tenants attempted to pay the \$650.00 security deposit by e-transfer, which was rejected by the landlord as the tenants did not pay their pet damage deposit of \$300.00 at the same time. A text submitted in evidence supports that the tenants attempted to pay the security deposit and included the password to the landlord to accept the deposit. Instead, the landlord rejected the security deposit “to avoid potential issues” and attempted to back out of the signed tenancy agreement when the tenants asked to pay the pet damage deposit the following month.

The female tenant stated that she is now homeless due to the actions of the landlord by refusing to comply with the signed tenancy agreement. The landlord wrote on page two of the tenancy agreement the following which was not initialed by the parties:

JK still has to provide his proof of employment and income before this agreement becomes valid.

No party

No smoking

No drugs.

The landlord has not provided the rental unit keys to the tenants and refuses access to the rental property and has threatened the tenants with trespassing in the texts

submitted in evidence. During the hearing, the landlord claims to have done nothing wrong and stands by their decision to back out of the tenancy agreement. The tenancy agreement was signed by both parties on June 6, 2019 and does not include an addendum. The landlord confirmed several times during the hearing that the rental unit is not occupied currently.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

Section 16 of the *Act* applies and states:

Start of rights and obligations under tenancy agreement

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement **is entered into, whether or not the tenant ever occupies the rental unit.**

[Emphasis added]

Based on the above, I find the landlord entered into a tenancy agreement as of June 6, 2019, when the tenancy agreement was signed, and that the tenancy was scheduled to start on June 15, 2019. I find the landlord failed to exercise reasonable due diligence by doing income and employment checks prior to signing the tenancy agreement and I find that adding the words described above to the tenancy agreement without the parties signing those added words, makes them unenforceable as part of the tenancy agreement.

In addition, section 54 of the *Act* applies and states:

Order of possession for the tenant

54 (1) A tenant who has entered into a tenancy agreement with a landlord may request an order of possession of the rental unit by making an application for dispute resolution.

(2) The director may grant an order of possession to a tenant under this section before or after the date on which the tenant is entitled to

occupy the rental unit under the tenancy agreement, and the order is effective on the date specified by the director.

(3) The date specified under subsection (2) may not be earlier than the date the tenant is entitled to occupy the rental unit.

Based on the above, I grant the tenants an **immediate order of possession** for the rental unit pursuant to section 54 of the *Act*. I find the landlord breached section 45 of the *Act* by attempted to end this tenancy agreement in a method not approved under the *Act*.

I ORDER the landlord to immediate provide the tenants with the rental unit keys and provide access to the rental unit as this tenancy is in effect and is valid.

Pursuant to section 62(3) of the *Act*, I find the tenants are only responsible for the per diem rent from the date they are provided the rental unit keys by the landlord until July 14, 2019 and from that point forward the monthly rent remains \$1,300.00 per month and is due on the 15th day of each month.

As the tenants' application was successful, I grant the tenants a \$100.00 monetary order pursuant to sections 67 and 72 of the *Act*. I authorize the tenants to deduct \$100.00 from their monthly rent; however, should the landlord decide to violate my order described above I grant the tenants a \$100.00 monetary order. The landlord is cautioned that if they violate my order, the landlord could be subject to an investigation for an administrative penalty by the RTB Compliance and Enforcement Unit. I note that an administrative penalty under the *Act* carries a maximum penalty of \$5,000.00 per day.

Conclusion

The tenants' application is fully successful.

The tenancy has begun and the landlord is ordered to immediately provide the tenants with the rental unit keys and access to the rental unit.

The landlord may only end the tenancy in accordance with the *Act*.

Should the landlord refuse to grant access to the tenants, the tenants must serve the landlord with the order of possession. The tenants must serve the landlord with the

order of possession and the order may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The tenants are granted a \$100.00 monetary order pursuant to section 67 and 72 of the *Act*. Should the tenants require enforcement of the monetary order, the tenants must first serve the landlord with the order and then may enforce the order in the Provincial Court (Small Claims Division).

This decision will be emailed to the parties. The monetary order and the order of possession will be emailed to the tenants only for service on the landlord.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: July 3, 2019

Residential Tenancy Branch