



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession of the rental unit pursuant to section 54; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented by their agent (the "landlord").

At the outset of the hearing the parties agreed that the second named applicant is a corporate entity that has no landlord-tenant relationship with the respondent. The tenant testified that the second applicant is a corporate entity with which they have a separate contractual relationship but confirmed that they do not represent the second applicant nor are they authorized to speak on their behalf. As the second named applicant has no relationship with the respondent I find it appropriate to remove them as a party from this proceeding.

As both parties were present service was confirmed. The parties each confirmed receipt of the respective materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. Both parties gave evidence of an acrimonious familial relationship between the parties, including the landlord's agent. The principal aspects of the claim and my findings around each are set out below.

There is a landlord-tenant relationship between the parties entered into in May, 2017. A copy of a signed agreement between the parties dated May 30, 2017 was submitted into evidence. The agreement provides that the rental suite will be leased by the landlord to the tenant commencing July 1, 2017 for an initial monthly rent of \$3,000.00. The rent will increase to \$3,500.00 in 2018.

The landlord submits that there have been recent altercations between the parties and actions by the tenant which has given rise to cause to end the tenancy. The landlord issued a 1 Month Notice to End Tenancy for Cause dated July 10, 2019.

The tenant submits that the landlord has denied them access to the rental unit from July 4, 2019, prior to the issuance of the 1 Month Notice.

Analysis

In accordance with section 54 of the Act a tenant who has entered into a tenancy agreement may request an order of possession of the rental unit.

Based on the undisputed testimonies of the parties and the documentary evidence I find that the agreement of May 30, 2017 created a tenancy agreement between the parties allowing the tenant exclusive use of the rental unit in exchange for rent in the amount specified.

I accept the evidence of the parties that the tenant has been denied access to the rental unit.

While the landlord gave evidence about conflicts between the parties and behaviour on the part of the tenant which they believe gives rise to cause to end the tenancy, I find that this does not grant the landlord the authority to unilaterally deny the tenant access

to the rental unit. The issuance of a 1 Month Notice does not allow the landlord the right to prevent the tenant from accessing the rental unit without taking the appropriate legislative steps.

I find that there is a valid tenancy agreement between the parties and the tenant is entitled to an Order of Possession of the rental unit.

As the tenant's application was successful the tenant may recover their filing fee from the landlord. As this tenancy is continuing the tenant may make a one-time deduction of \$100.00 from the next scheduled rent payment to satisfy this monetary award.

Conclusion

I grant an Order of Possession in the tenant's favour effective two (2) days after service on the landlord. Should the landlord fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenant is authorized to make a one-time deduction of \$100.00 from their next scheduled rent payment.

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: August 2, 2019

Residential Tenancy Branch