



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFT MNDCT OT RPP OPM

Introduction

This hearing dealt with applications from both the landlords and tenants pursuant to the Residential Tenancy Act.

The landlords applied for an order of possession pursuant to section 55 of the Act.

The tenants applied for:

- Authorization to recover the filing fee from the landlords pursuant to section 72;
- A monetary award for damages and loss pursuant to section 67;
- Other unspecified relief; and
- Authorization to reduce rent pursuant to section 65.

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 co-landlord MG (the “landlord”) primarily spoke on behalf of both landlords. The co-tenant RGS (the “tenant”) primarily spoke on behalf of both co-tenants.

The landlord confirmed receipt of the tenant’s materials. Based on the testimony I find that the landlord was served with the tenant’s materials in accordance with sections 88 and 89 of the Act.

The landlord testified that they served each of the tenants with their application and evidence by registered mail sent on July 19, 2019. The landlord provided a valid Canada Post tracking number as evidence of service. The tenants testified that they received a notice of attempted delivery but were unable to receive the landlord’s materials as they did not have valid identification to present to the postal service.

Based on the testimonies I find that the tenants are both deemed served with the landlord's materials on July 24, 2019, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession?

Are the tenants entitled to any of the relief sought?

Background and Evidence

The parties agree on the following facts. The co-tenant KNB and co-landlord RG signed a Mutual Agreement to End Tenancy on June 15, 2019 providing that the tenancy will end on July 30, 2019.

The tenant submits that at the time of signing, the tenants were hosting a birthday party with guests including children. The tenants submit that they were unaware of the implication of the Mutual Agreement they signed and believe it is invalid. The tenants submit that the agreement was only signed by one co-tenant and that there was emotional distress at the time of signing.

The tenant said that prior to presenting the Mutual Agreement the landlords removed a number of the tenants' personal items and medicinal marijuana from the rental unit. The tenants estimates that the cost of all items removed from the rental unit by the landlord to be \$2,700.00.

Analysis

Both of the named tenants are listed on the tenancy agreement. Accordingly, I find that the two tenants are co-tenants as set out in Residential Tenancy Policy Guideline 13. The Guideline provides that co-tenants are two or more tenants who rent the same property under the same tenancy agreement. The Guideline further provides that co-tenants are jointly and severally liable for any damages relating to the tenancy and that proper notice to end the tenancy provided by one tenant will effective end the tenancy for all co-tenants under the tenancy agreement. As such, a Mutual Agreement to End Tenancy signed by one of the co-tenants is effective on all of the co-tenants under the tenancy agreement. It is not necessary that all of the co-tenants individually sign the Mutual Agreement.

I find that the Mutual Agreement to End Tenancy to be valid and enforceable. While the tenants submit that they did not comprehend the nature of the document they were signing, the standard form is clearly titled "Mutual Agreement to End Tenancy", provides at the top that neither party is under any obligation to sign the form and by signing the parties are agreeing that the tenancy ends with no further obligations on either party.

I find that the tenant's submission that they were under distress and coerced to sign the agreement to not be persuasive or believable. The tenants' submissions are not supported in any documentary evidence and while the tenant made some allusions to witnesses, none were called for the hearing. I find that the tenant KNB could simply have chosen not to sign the form if they had disagreed with its contents. I find the tenants have provided insufficient evidence that there was any coercion, or undue influence exerted by the landlord in order to induce the tenant to sign the agreement. I find the tenant's oral submissions to be insufficient as it lacks the air of credibility and is not supported by any other evidence.

I find that there is a valid and enforceable Mutual Agreement to End Tenancy between the parties providing that the tenancy ends on July 30, 2019. Accordingly, I find that the landlords are entitled to an Order of Possession. As the effective date of the Mutual Agreement has passed I issue an Order enforceable two (2) days after service.

In accordance with Residential Tenancy Rule of Procedure 6.6 the onus to establish a claim on a balance of probabilities lies with the applicant. I find that the tenants have failed to establish that there has been any monetary damages or loss incurred as a result of the landlords.

I find the tenants' submission that the landlords removed personal items and medicinal marijuana from the rental unit to not be supported in any evidence and not have the air of reality. I find the tenants testimony to be far from believable. If landlords were removing items from the rental unit in the presence of the tenant and guests it would be reasonable to expect that there would have been some altercation or intervention. The tenants made vague reference to witnesses and calling authorities but no documentary evidence was submitted nor were any witnesses called to testify. I find that the tenants have failed to establish that they were in possession of any items in the rental unit, that the landlords removed these items without authorization, or that the monetary value of these items is the amount claimed.

Accordingly, I dismiss the entirety of the tenants' application.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenants. Should the tenants 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: August 16, 2019

Residential Tenancy Branch