



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlords under the *Residential Tenancy Act* (the “Act”) for an Order of Possession based on a mutual agreement to end tenancy, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

Both Landlords and the Tenant were present for the teleconference hearing. The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlords’ evidence. The Tenant did not submit any evidence prior to the hearing. Neither party brought up any issues regarding service.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Issues to be Decided

Are the Landlords entitled to an Order of Possession based on a mutual agreement to end the tenancy?

Should the Landlords be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The Landlords provided testimony that the tenancy started approximately 5 years ago. They stated that current monthly rent is \$887.00 as stated on a tenancy agreement that was signed on March 3, 2019 and submitted into evidence.

The Tenant testified that the tenancy started approximately 5.5 years ago through a verbal tenancy agreement. He stated that monthly rent is \$882.00.

Both parties were in agreement that no security deposit or pet damage deposit was paid.

The Landlords stated that the tenancy was set to end on June 30, 2019 after a mutual agreement signed by the Landlords and Tenant. They submitted a copy of a letter dated May 13, 2019 which states that they accept that the Tenant will vacate the rental unit by the end of June 2019. The letter is signed by both Landlords and the Tenant.

The Landlords stated that they drafted this letter after a phone message from the Tenant informing them that he would be moving out.

The Tenant stated that he signed this letter on May 13, 2019 but that it was to move out when he was able to find a place to live, not at the end of June 2019. Later in the hearing, the Tenant stated that he did agree to move out at the end of June but as he was unable to find a place he asked to stay longer. He stated that due to this he paid additional rent for July 2019 and 10 days of August 2019 in the amount of \$1,100.00.

The Tenant testified that he was unable to move out on August 10, 2019 as planned due to the Landlords' interference with the movers as well as the Landlords changing the entry code to the rental unit.

The Landlords stated that they accepted a payment of \$1,100.00 for use and occupancy only as an offer from the Tenant to stay an additional month. They stated that they did not receive any money towards August 2019 rent. The Landlords denied that they interfered with the Tenant's move and that they changed the access code to the rental unit.

Both parties presented additional testimony about issues that arose during this tenancy. However, they were notified at the hearing that the decision would only address the claims as listed on the Application for Dispute Resolution before me.

Analysis

As stated in Section 44(1)(c) of the *Act* a tenancy may be ended if the landlord and tenant agree in writing.

I accept the evidence before me that shows that the parties entered into a mutual agreement to end the tenancy on June 30, 2019 through a letter signed on May 13, 2019. Both parties also confirmed during the hearing that they signed this letter and that the intent was to end the tenancy.

The parties also agreed that rent was accepted for use and occupancy for the Tenant to stay through July 2019, although were not in agreement as to whether any rent was paid for August 2019. Although I have no evidence before me regarding an agreement reached between the parties for additional time for the Tenant to move, I find that the Tenant stated that rent was only paid until August 10, 2019 and that he had agreed to move out.

I also have no evidence before me regarding the Tenant's claim that the Landlords interfered with his move and that he has therefore been unable to move. As such, I accept the evidence before me that the Tenant agreed to move out on June 30, 2019. I also accept that the Tenant was provided an additional month to move and has not done so.

Upon review of the mutual agreement signed by all parties, I find it to be in compliance with Section 52 of the *Act*. Therefore, pursuant to Section 55(2)(d), I find that the Landlords are entitled to an Order of Possession. As I find that the Tenant is overholding the rental unit after the parties agreed that the tenancy would end, I award a two-day Order of Possession to the Landlords.

As the Landlords were successful in their application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee paid for the application in the amount of \$100.00. The Landlords are awarded a Monetary Order in this amount.

As stated above, both parties presented testimony on other issues regarding this tenancy. However, as stated by rule 2.2 of the *Residential Tenancy Branch Rules of Procedure*, a claim is limited to what is stated on the application. Therefore, I decline to make any additional findings beyond the claims as stated on the Application for Dispute Resolution.

Conclusion

Pursuant to Section 55(2) of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. 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.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlords a **Monetary Order** in the amount of **\$100.00** for the recovery of the filing fee paid for the Application for Dispute Resolution. The Landlords are provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: August 19, 2019

Residential Tenancy Branch