



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN, FFL

Introduction

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

- an Order of Possession because the tenant has signed a mutual agreement to end this tenancy and has not surrendered vacant possession of the rental unit to the landlord pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:17 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the teleconference system that the landlord, their brother, one of the landlord's witnesses who we did not need to hear from, and I were the only ones who had called into this teleconference hearing for this dispute.

The landlord gave sworn testimony supported by written evidence that the landlord and the tenant signed a Mutual Agreement to End Tenancy (the Mutual Agreement) on October 5, 2019. I find that the tenant was served with this Notice in accordance with section 88 of the *Act*. The landlord and their brother who assisted them at this hearing gave sworn testimony that they handed the tenant a copy of the landlord's dispute resolution hearing package and written evidence on October 5, 2019. I find that the tenant was served with this material in accordance with sections 88 and 89 of the *Act*. The tenant did not provide any written evidence for this hearing.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord entered into written evidence a copy of the one-year fixed term Residential Tenancy Agreement for this tenancy that the parties signed on September 30 and October 4, 2018. According to the terms of this Agreement, the tenancy was to run from October 1, 2018 until October 1, 2019. Monthly rent was set at \$2,250.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$1,125.00 security deposit and \$1,125.00 pet damage deposit, both paid on October 1, 2018.

Although the tenant vacated the rental unit by October 2, 2019, as per the terms of their Mutual Agreement, the landlord and their brother provided undisputed sworn testimony and written evidence that the tenant allowed occupants to reside in the rental unit who have not vacated the rental unit when this tenancy ended. The landlord asked for an Order of Possession by October 2, 2019, pursuant to the Mutual Agreement signed by the landlord and the tenant, to enable the landlord to obtain vacant possession of the premises.

Analysis

Paragraph 55(2)(d) of the Act reads in part as follows:

(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:...

(d)the landlord and tenant have agreed in writing that the tenancy is ended...

In considering this matter, I have also taken into consideration Residential Tenancy Branch Policy Guideline 19, entitled "Assignment and Sublet," which includes the following description of occupants who have no direct contractual relationship with the landlord as is the case in this dispute:

...Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and

rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the Residential Tenancy Act...

Those currently occupying the landlord's rental unit are occupants and have no rights under the *Act*. The tenant who has allowed the occupants to gain access to and reside in the rental unit has moved out of the rental unit pursuant to their fixed term tenancy agreement and their Mutual Agreement. Under these circumstances, I allow the landlord's application for an Order of Possession, pursuant to paragraph 55(2)(d) of the *Act*.

Since the landlord has been successful in this application, and the tenant is responsible for enabling the occupants to gain access to the rental unit, enabling them to continue living in the rental unit after the tenant's departure, I allow the landlord's application to recover their filing fee from the tenant.

Conclusion

I allow the landlord's application. I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant, which may be accomplished by posting a copy of the Order on the door of this rental unit. Should the tenant or any occupant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour in the amount of \$100.00, which enables the landlord to recover their filing fee for this application from the tenant. The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: November 07, 2019