



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL OPN

Introduction

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

- an Order of Possession for a Tenant's Notice to End Tenancy, pursuant to section 55 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Agent J.P. attended and spoke on behalf of the landlords and is herein referred to as "the landlord".

As both parties were in attendance, service of documents was confirmed. The parties confirmed that the landlord's Notice of Dispute Resolution Proceeding Package and evidence was served on the tenant by Canada Post registered mail, in accordance with sections 88 and 89 of the *Act*. The tenant confirmed that she did not submit any evidence for this matter.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession? Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

A written tenancy agreement was submitted into evidence. Both parties agreed to the following facts regarding the tenancy agreement:

- This tenancy began on October 1, 2017 as a one-year fixed term tenancy which converted to a month to month tenancy, with monthly rent set at \$1,825.00 payable on the first day of each month.
- A security deposit of \$912.50 was paid by the tenant upon moving in and continues to be held by the landlord.
- The tenant is the only named tenant on the tenancy agreement and only the landlord and tenant signed the tenancy agreement.

The tenant confirmed that she provided the landlord with written notice on September 30, 2019 that she wished to end her tenancy effective October 31, 2019. The landlord submitted a copy of the tenant's written notice to end tenancy into documentary evidence for this hearing.

Both parties provided the same testimony pertaining to an occupant in the rental unit, who is not a named tenant on the tenancy agreement, refusing to vacate the rental unit in accordance with the notice to end tenancy provided by the tenant.

Analysis

Section 55(2) of the *Act* provides that a landlord may request an order of possession of a rental unit when a notice to end the tenancy has been given by the tenant.

In this matter, it was undisputed that the tenant had provided the landlord with written notice to end tenancy and confirmed in the hearing that she wished to end the tenancy. However, an occupant in the rental unit refused to vacate the rental unit despite the tenant's notice to end the tenancy.

Residential Tenancy Policy Guideline #13. Rights and Responsibilities of Co-tenants explains that "occupants" have no rights or obligations under the tenancy agreement, as follows:

Occupants

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

The landlord and tenant confirmed that there had not been any agreement made to include the occupant as a tenant on the tenancy agreement at any time.

As such, in accordance with section 55(2) of the *Act*, based on the undisputed testimony and evidence of both parties, on a balance of probabilities, I find that the landlord is entitled to an Order of Possession effective two days after service upon the tenant.

As the landlord was successful in their Application in obtaining an Order of Possession, I find that the landlord is entitled to recover the \$100.00 cost of the filing fee from the tenant. I order the landlord to retain \$100.00 from the security deposit in full satisfaction of the recovery of the filing fee.

Conclusion

The landlord is granted an Order of Possession effective two days after service on the tenant. The Order of Possession is to be served on the tenant as soon as possible. If the tenant and any occupants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord is ordered to retain \$100.00 from the security deposit as recovery of the filing fee.

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 12, 2019

Residential Tenancy Branch