



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, FFL

Introduction

On October 16, 2019, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a Mutual Agreement to End a Tenancy pursuant to Section 55 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

E.J. attended the hearing as an agent on behalf of the Landlord. The Tenant did not attend the 10-minute hearing. All parties provided a solemn affirmation.

E.J. confirmed that she served the Tenant the Notice of Hearing and evidence package by registered mail on October 24, 2019 (the registered mail tracking number is noted on the first page of this decision). Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was deemed to have received the Notice of Hearing and evidence package five days after it was mailed.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession based on the Mutual Agreement to End a Tenancy?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

E.J. stated that the tenancy started on November 15, 2017, that rent was currently established at \$820.00 per month, and that it was due on the first day of each month. A security deposit of \$400.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She stated that a Mutual Agreement to End a Tenancy was signed with the Tenant on August 29, 2019 with an effective end date of the tenancy for September 30, 2019 at 1:00 PM. This agreement was entered into evidence. As the Tenant had not moved out by the effective date of the agreement, the Landlord applied for an Order of Possession.

She advised that the Tenant has not paid rent for September 2019 onwards.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I note that Section 55 of the *Act* allows a Landlord to submit an Application for Dispute Resolution seeking an Order of Possession based on a Mutual Agreement to End a Tenancy, and I must consider if the Landlord is entitled to that Order if the agreement is valid.

As well, Section 44 of the *Act* allows a tenancy to end by mutual consent of both the Landlord and the Tenant.

In considering this matter, I have reviewed the Mutual Agreement to End a Tenancy and both the Landlord and Tenant signed and agreed to the terms stated in that agreement. Based on the undisputed evidence before me, I am satisfied that the Landlord and Tenant agreed to mutually end the tenancy on September 30, 2019 at 1:00 PM. As the

Tenant failed to vacate the rental unit by this time, I find that the Landlord is entitled to an Order of Possession effective **two days after service of this Order** on the Tenant.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain \$100.00 from the security deposit, if he chooses to do so, in satisfaction of the debt outstanding.

Conclusion

The Landlord is provided with a formal copy of an Order of Possession effective **two days after service of this Order**. Should the Tenant or any occupant on the premises 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: December 10, 2019

Residential Tenancy Branch