



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, FFT

Introduction

This expedited hearing dealt with the tenants' application against the landlord under the *Residential Tenancy Act* (the Act) for:

- an order of possession, pursuant to section 54; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Tenants TO ("the tenant") and PP and Landlord OM were in attendance. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary issue – exclusion of evidence

The tenant testified he served the Notice of Hearing and all the evidence on January 08, 2020 via registered mail. The landlord testified she was notified of the registered mail but did not claim it or serve her evidence to the tenants because she was out of the country. The landlord also testified she learned about this hearing because she called the Residential Tenancy Branch.

Section 89(1)(c) of the Act states:

89 (1)An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

(c)by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

Based on Section 89(1)(c) and 90(a) of the Act, the landlord is deemed served with the application and evidence on January 13, 2020. All the evidence of the tenants is accepted.

Rule 10.5 states the respondent must ensure evidence they intend to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible and at least two days before the hearing.

As the landlord did not serve any evidence to the tenants, I have excluded the evidence uploaded by the landlord.

Issues to be Decided

Are the tenants entitled to an order of possession?

Are the tenants entitled to repayment of the filing fee?

Background and Evidence

While I have turned my mind to all the accepted evidence provided by the parties, including documentary evidence and testimony, not all details of the respective submissions and arguments are reproduced here. I explained Rule of Procedure 7.4 to the parties; it is their obligation to present the evidence to substantiate their application.

Both parties also agreed a written tenancy agreement was signed on November 05, 2019. The tenancy is a fixed term, starting on February 01, 2020 and ending on January 31, 2021. Monthly rent is \$2,200.00 due on the first day of the month. A security deposit of \$1,100.00 was collected.

The tenant affirmed the landlord is refusing to provide possession of the rental unit on February 01, 2020 and has not returned the security deposit.

The tenants provided the signed fixed term tenancy agreement, a December 16, 2019 advertisement for the rental unit, email communication with the landlord, as well as email communication between the tenant's friend (IG) and the landlord. The tenant affirmed the landlord offered to rent the tenant's unit to IG for a period already covered by their tenancy agreement.

The landlord affirmed she is living in the rental unit and cannot provide the tenant possession of the unit on February 1, 2020 for personal reasons. She expected to be able to rent the unit later in the year and doesn't dispute advertising the unit for a possession date in the spring when her personal situation is expected to resolve. Her communication with the tenants was compromised by her personal circumstances. She attempted to return the security deposit through her bank but the transaction was not completed.

Analysis

Based on the testimony of both parties and the written tenancy agreement, I find both parties entered into a valid term tenancy agreement on November 05, 2019.

Section 16 of the Act states:

Start of rights and obligations under tenancy agreement

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

The landlord is obligated to fulfill the terms of the tenancy agreement until it is lawfully ended.

The tenancy agreement, the Act and policy guideline #30 set out the lawful reasons to end a fixed term tenancy. The tenancy agreement states at section 14 (4) that "The landlord may end the tenancy only for the reasons and only in the manner set out in the Residential Tenancy Act and the landlord must use the approved notice to end a tenancy form available from the Residential Tenancy Branch." Section 44 of the Act provides for the types of notices that may end a tenancy. For further information on ending a fixed term tenancy, section C of policy guideline #30 states, "During the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties....A landlord cannot give notice for landlord's use of property that will end a fixed term tenancy before the end of the fixed term."

The tenancy has not been lawfully ended and the landlord is obligated to provide vacant possession to the tenant effective February 1, 2020.

Section 54 of the Act states:

54 (1) A tenant who has entered into a tenancy agreement with a landlord may request an order of possession of the rental unit by making an application for dispute resolution.

(2) The director may grant an order of possession to a tenant under this section before or after the date on which the tenant is entitled to occupy the rental unit under the tenancy agreement, and the order is effective on the date specified by the director.

Therefore, pursuant to section 54(2) of the Act, I grant the tenants an order of possession, effective 2 days after service and not before February 01, 2020.

As the tenants are successful with their application, pursuant to section 72 of the Act, I authorize them to recover the \$100.00 filing fee. I order that this amount may be deducted from the rent payment due on February 01, 2020.

Conclusion

Pursuant to section 54(2), I grant an order of possession to the tenant effective 2 days after service and not before February 01, 2020. The tenants must serve this order on the landlord as soon as possible. Should the landlord 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 section 72(2)(a) the tenants are authorized to deduct \$100.00 from their rent payment for February 2020 to recover their 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: January 28, 2020

Residential Tenancy Branch