



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, FFT

Introduction

On January 29, 2020 the Tenants submitted an Application for Dispute Resolution (the “Application”), seeking relief pursuant to the *Residential Tenancy Act* (the “Act”) for the following:

- an order of possession for the Tenants;
- an order granting the return of the filing fee.

W.H. and O.L attended the hearing representing the Tenants. D.C. attended the hearing as an Agent for the Landlord. At the beginning of the hearing, the parties acknowledged receipt of their respective application packages and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to an order of possession, pursuant to Section 54 of the Act?
2. Are the Tenants entitled to the return of the filing fee, pursuant to Section 72 of the Act?

Background and Evidence

The parties testified and agreed that the tenancy began on August 1, 2017. Currently, the Tenants are required to pay rent in the amount of \$850.00 which is due to be paid to the Landlord on the first day of each month. The Tenants paid a security deposit which the Landlord continues to hold.

The Tenants' representatives stated that the Landlord changed the locks on the rental unit and determined the rental unit had been abandoned on January 13, 2020. Tenants' representatives stated that the Tenants had paid rent for the month of December 2019 and were admitted to the hospital on December 24, 2019. The Tenants' representatives stated that they attended the rental unit to gather some of the Tenants' belongings, however, they were denied entry by the Landlord. The Tenants' representatives offered to pay January 2020 rent to the Landlord on January 27, 2020, however, the Landlord refused to accept it.

The Tenants' representatives stated that they submitted their Application based on the fact that the Landlord denied them entry to the rental unit and that the Landlord had advised them to do so.

The Landlord's Agent confirmed that the Tenants were admitted to the hospital and stated that the Landlord received notification from the hospital that the Tenants were unlikely to return to the rental unit. The Landlord's Agent stated that the lock to the rental unit was changed on January 13, 2020 as the Landlord was unsure as to who the Tenants' representatives were and wanted to maintain the security of the Tenants' rental unit. The parties agreed that the Tenants' representatives were denied entry to the rental unit until the first week of February 2020.

The parties agreed during the hearing that the Tenants provided the Landlord with a notice to end tenancy on January 30, 2020 with an effective move out date of February 29, 2020. During the hearing, the parties agreed that the Tenants and their representatives currently have full access to the rental unit and will facilitate a move out as of February 29, 2020.

The Tenants are seeking the return of the \$100.00 filing fee paid to make the Application.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

I accept that the parties agreed that the Tenants and their representatives currently have full access to the rental unit and that the parties have agreed that the tenancy will end on February 29, 2020 in accordance with the Tenants' notice to end tenancy. As such, I find that the Tenants' Application for an order of possession is not necessary and is therefore dismissed.

The Tenants are seeking the return of the \$100.00 filing fee paid to make the Application. During the hearing, the parties agreed that the Landlord changed the locks to the rental unit on January 13, 2020, preventing access to the Tenants' representatives. The Landlord's Agent stated that the Landlord considered the rental unit to have been abandoned based on the information he received from the hospital that the Tenants were unlikely to return to the rental unit.

In this case, I find that the Landlord provided insufficient evidence to demonstrate that the Tenants had abandoned the rental unit. As such, I find that the Landlord was not permitted to change the locks, preventing the Tenants or their guests access to the rental unit.

As such, I find that the Tenants are entitled to the return of the \$100 filing fee paid to make the Application.

Conclusion

The parties agreed that the tenancy will end on February 29, 2020. The Tenants' Application for an order of possession is dismissed.

The Tenants are granted a monetary order in the amount of \$100.00. The monetary order should be served to the Landlord as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: February 28, 2020

Residential Tenancy Branch