



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, FF

Introduction

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

- an order of possession for breach of an agreement pursuant to section 55;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The landlords attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlords stated that the tenant was served with the notice of hearing package and the initial documentary evidence via Canada Post Registered Mail on January 18, 2020 and have submitted a copy of the Canada Post Customer Receipt and Tracking Number as confirmation.

The landlords filed an amendment to the application seeking a monetary claim of \$1,100.00 for loss of rental income as the tenant had failed to pay any rent for February and March 2020 and still occupy the premises. The landlords also seek an additional \$1,100.00 for the second month (March) as the tenant continues to occupy the rental without paying any rent. The landlords stated that the tenant was served with the amendment via Canada Post Registered Mail on February 19, 2020. The landlord stated that the tenant was served with the additional submitted documentary evidence package via Canada Post Registered Mail on March 2, 2020.

The landlords also stated that a second amendment was filed on March 2, 2020 for an increase to the monetary claim for compensation to \$2,430.00. A review of the landlord's documentary evidence and the Residential Tenancy Branch File show that the landlords had uploaded the amendment document as evidence instead of filing the

amendment application. As such, the landlord's request for the additional monetary claim is dismissed with leave to reapply as it was not properly filed. Leave to reapply is not an extension of any applicable limitation period.

I accept the undisputed affirmed evidence of the landlords that the tenant was properly served with the notice of hearing package, the amendment to the application for dispute and the 2 documentary evidence package(s) via Canada Post Registered Mail. Although the tenant failed to attend, I find that the tenant is deemed sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Are the landlords entitled to an order of possession?

Are the landlords entitled to a monetary order for loss of rental income and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on February 1, 2019 on a fixed term tenancy ending on January 31, 2020 as per the submitted copy of the signed tenancy agreement dated December 27, 2018. The monthly rent is \$1,100.00 payable on the 1st day of each month. A security deposit of \$550.00 and a pet damage deposit of \$550.00 were paid.

The landlord stated that the fixed term agreement agreed upon with the tenant states that the tenant will vacate the rental unit on January 31, 2020 for the landlord to use (in-laws to move-in).

Section 1.1 of the signed agreement states in part,

It is understood that the tenancy ends at the expiry of the fixed term and the tenant must vacate the premises. **This requirement is only permitted in circumstances prescribed by the Residential Tenancy Regulations.**

Reason Tenant must vacate: Landlord's use of Property.

This section of the tenancy agreement shows initials of both parties.

This landlords' provided undisputed affirmed testimony that the landlord, K.D.'s parents would be occupying the rental unit. The landlords claim that the tenants refused to vacate the rental unit and still occupy the rental premises as of the date of this hearing. The landlords also claim that no rent has been paid for February 2020 of \$1,100.00 and March 2020 of \$1,100.00. The landlords have claimed that as a result of the tenant's refusal to vacate the rental unit on January 31, 2020, the landlord, K.D.'s parents have had to seek temporary alternative storage of their personal property while waiting for vacant possession.

Analysis

Section 55 (2) (c) of the Act states in part that a landlord may seek an order of possession by making an application for dispute when the tenancy agreement is a fixed term tenancy and requires the tenant to vacate the rental unit at the end of the term.

Residential Tenancy Regulation 13.1 (2) states in part the circumstances in which a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate the rental unit at the end of the term are that the landlord is an individual and the landlord or a close family member of that landlord intends in good faith at the time of entering the tenancy agreement to occupy the rental unit at the end of the term.

In this case, I accept the undisputed affirmed evidence of the landlords that both parties entered into a signed tenancy agreement with a fixed term ending tenancy of January 31, 2020 in which at the end of tenancy, the tenants would vacate the rental premises to allow it for landlord's use, to be occupied by the landlord, K.D.'s parents. As such, I find that the landlords are entitled to an order of possession to be effective 2 days after being served upon the tenant.

On the landlord's request for monetary compensation, I find that the landlords have established a claim for unpaid rent/loss of rental income of \$2,200.00 for the 2 months, February and March 2020 at \$1,100.00 per month. The landlords provided undisputed affirmed evidence that the tenant failed to pay rent for these two months and still occupy the rental premises.

The landlords having been successful are entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlords are granted an order of possession.

The landlords are granted a monetary order for \$2,300.00.

These orders must be served upon the tenant. Should the tenant fail to comply with these orders, these orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as an order of those courts.

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: March 17, 2020

Residential Tenancy Branch