



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FFL

Introduction

In this dispute, the landlord seeks an order of possession pursuant to sections 49 and 55 of the *Residential Tenancy Act* (the “Act”). They also seek recovery of the filing fee under section 72 of the Act.

The landlord applied for dispute resolution on March 19, 2020 and a dispute resolution hearing was held, by way of telephone conference, on May 14, 2020. The landlord, but not the tenant, attended the hearing. The landlord was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Submitted into evidence is a letter signed by the tenant acknowledging that he received the Notice of Dispute Resolution Proceeding package from the landlord on March 25, 2020. As such, I find that the tenant was served in accordance with the Act.

I have only considered evidence that was submitted in compliance with the *Rules of Procedure*, to which I was referred, and which was relevant to the issues of this application. As such, not all of the parties’ testimony may necessarily be reproduced.

Issues

1. Is the landlord entitled to an order of possession?
2. Is the landlord entitled to recovery of the filing fee?

Background and Evidence

The landlord served a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") on the tenant on February 26, 2020 and which indicated the tenancy would end on April 30, 2020. A copy of the Notice was submitted into evidence, along with a copy of a Proof of Service. There is no evidence that the tenant disputed the Notice.

The tenant has apparently vacated the rental unit as of May 10 or 11, 2020, but has left a lot of his belonging behind, which the landlord has had to put into storage.

The landlord testified that the tenant paid a security deposit of \$387.50, which is currently held in trust.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 55(2) of the Act states that

A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

- (a) a notice to end the tenancy has been given by the tenant;
- (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired [. . .]

In this application, the landlord requested an order of possession of the rental unit, the notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice, and, the time for making such an application has expired. As such, I grant the landlord an order of possession, which is issued in conjunction with this decision.

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was successful, I grant his claim for reimbursement of the filing fee.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As the tenancy ended on April 30, 2020, I order that the landlord may retain \$100.00 of the tenant’s security deposit in partial satisfaction of the above-noted award.

As briefly noted during the hearing, the remainder of the security deposit is subject to the rules set out in [section 38](#) of the Act.

Conclusion

The landlord’s application is granted.

I hereby grant the landlord an order of possession, which must be served on the tenant (if deemed necessary) and is effective two days from the date of service. This order may be filed in, 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 Act.

Dated: May 14, 2020

Residential Tenancy Branch