



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, FFL

Introduction

This hearing was scheduled in response to the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession pursuant to sections 44 and 55 of the *Act*
- an application for the filing fee pursuant to section 72 of the *Act*.

The landlord's legal counsel MD and property manager ND ("landlord") attended the hearing via conference call. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions. The tenant did not attend this hearing.

The landlord testified the tenant was served the Notice of Dispute Resolution together with the evidentiary package via Canada Post registered mail on June 3, 2020. I find that this satisfied the service requirements set out in sections 88 and 89 of the *Act*, and find the tenant was deemed to have received the documents in accordance with section 90 of the *Act* on June 8, 2020. Canada Post tracking number is listed on the first page of this decision.

Rule of Procedure 7.3 states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply. I proceeded with the hearing.

Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent pursuant to sections 44 and 55 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

This tenancy began on July 1, 2013. The landlord testified that monthly rent in the amount of \$1,300.00 was payable on the first day of each month and a security deposit of \$350.00 was paid by the tenant and continues to be held in Trust by the landlord. The landlord submitted a copy of the Tenancy agreement in evidence.

The landlord provided testimony that the tenant had signed a Mutual Agreement to End Tenancy in December 2019 granting \$10,000 in compensation to vacate and end the tenancy on April 30, 2020.

Copy of Mutual Agreement to End Tenancy was submitted in evidence by the landlord. The landlord provided testimony that despite the mutual agreement the tenant is refusing to vacate the rental unit. The landlord is seeking an order of possession and the filing fee.

The tenant did not attend the hearing to present any submissions in relation to the application and the tenant did not upload any evidence disputing the landlord's application.

Analysis

Based on the landlord's testimony and Mutual Agreement to End Tenancy. I find that the tenant signed a valid Mutual Agreement to End Tenancy. The tenancy ended on the effective date of April 30, 2020 in accordance with the terms of the Mutual Agreement between the parties.

- 44** (1)A tenancy ends only if one or more of the following applies:
- (a)the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i)section 45 [*tenant's notice*];

(i.1) section 45.1 [*tenant's notice: family violence or long-term care*];

(ii)section 46 [*landlord's notice: non-payment of rent*];

(iii)section 47 [*landlord's notice: cause*];

(iv)section 48 [*landlord's notice: end of employment*];

(v)section 49 [*landlord's notice: landlord's use of property*];

(vi)section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii)section 50 [*tenant may end tenancy early*];

(b)the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c)the landlord and tenant agree in writing to end the tenancy;

(d)the tenant vacates or abandons the rental unit;

(e)the tenancy agreement is frustrated;

(f)the director orders that the tenancy is ended;

(g)the tenancy agreement is a sublease agreement.

Based on section 44 (1) (c), the landlord and tenant both signed a mutual agreement to end the tenancy. The tenant has failed to vacate the rental unit. Pursuant to section 55 of the *Act*, I grant and an Order of Possession to the landlord effective two days after service.

As the landlord has been successful, I grant the \$100.00 filing fee pursuant to section 72 of the *Act*.

Conclusion

I grant a monetary order for the filing fee of \$100.00 pursuant to section 72 of the *Act*. This order must be served on the tenant. If the tenant fails to comply with this order the

landlord may file, the order in the Provincial Court (Small Claims) to be enforced as an order of that Court.

I grant an Order of Possession to the landlord effective **Two days after service of this Order** on the tenant. Should the tenant 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: July 07, 2020

Residential Tenancy Branch