



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on June 8, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a mutual agreement to end the tenancy; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing and was accompanied by S.P., a witness. The Tenant attended the hearing on his own behalf. All in attendance provided affirmed testimony.

The Landlord testified the Notice of a Dispute Resolution Proceeding package was served on the Tenant by email on June 9, 2020 and that the Tenant confirmed receipt on June 10, 2020. The Tenant acknowledged receipt. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*. The Tenant did not submit documentary evidence in response to the Application.

The parties were given the 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.

Issues to be Decided

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The parties confirmed the fixed-term tenancy began on April 1, 2020 and was expected to continue to June 30, 2020. Rent in the amount of \$1,450.00 per month is due on the first day of each month. The Tenant paid a security deposit in the amount of \$725.00, which the Landlord holds.

The Landlord testified the Tenant signed a Mutual Agreement to End a Tenancy dated April 27, 2020 (the "Agreement"). A copy of the Agreement, signed by both parties, was submitted into evidence. The Agreement purports to end the tenancy at 1:00 p.m. on June 30, 2020. The Landlord testified the Tenant did not pay rent when due on June 1 and July 1, 2020 but continues to occupy the rental unit.

In reply, the Tenant testified that he does not recall signing the Agreement. He also testified that he assumed the tenancy would continue at the end of the fixed term. The Tenant testified further that he has been diagnosed with Covid-19 on two occasions and is still recovering. He confirmed rent has not been paid as alleged but indicated an intention to do so.

Analysis

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

Section 44(1)(c) of the *Act* confirms that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy.

In this case, I am satisfied the parties agreed in writing to end the tenancy, as reflected in the Agreement. The signatures on the tenancy agreement and the Agreement appear to be identical, and I find there is insufficient evidence before me that the Tenant's alleged health concerns should vitiate the Agreement. Therefore, I find the tenancy ended on June 30, 2020 and that the tenant is overholding. I find the Landlord is entitled to an order of possession which will be effective two (2) days after it is served on the Tenant.

Having been successful, I find the Landlord is entitled to recover the filing fee paid to make the Application, which I order may be retained from the security deposit held.

Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after it is served on the Tenant. The order of possession 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 *Residential Tenancy Act*.

Dated: July 6, 2020

Residential Tenancy Branch