



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on June 10, 2020, wherein the Landlord requested an Order of Possession based on a Mutual Agreement to End Tenancy effective May 15, 2020, as well as recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for teleconference at 11:00 a.m. on July 6, 2020. Only the Landlord called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 11:12 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord testified that he served the Tenant with the Notice of Hearing and the Application on June 12, 2020 by email. While the Landlord was permitted to serve the Tenant by email, I was not provided any evidence or submissions to support a finding that email was a regular form of communication between the parties.

In any case, the Landlord further testified that on June 18, 2020 he sent the package to the Tenant by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Act*, documents served by registered mail are deemed served five days later; accordingly, I find the Tenant was duly served as of June 23, 2020 and I proceeded with the hearing in their absence.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Should the Landlord recover the filing fee?

Background and Evidence

A copy of the residential tenancy agreement was provided in evidence and which confirmed that this fixed term tenancy began October 18, 2019 and was to end on August 31, 2020. Monthly rent is \$1,010.00 and the Tenant paid a \$495.00 security deposit.

The parties agreed to a Mutual Agreement to End Tenancy which was signed by the Landlord on April 30, 2020 and signed by the Tenant on May 14, 2020. The effective date of the Mutual Agreement was May 15, 2020.

The Landlord confirmed that despite agreeing to move from the rental unit the Tenant remains in occupation. He also testified that the Tenant has not made her best efforts to relocate and has rather caused disturbances at the rental unit to such an extent that other renters are contemplating moving.

Analysis

Section 44 of the *Act* sets out how a tenancy ends and provides as follows:

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.

(2)[Repealed 2003-81-37.]

(3)If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

I find that the parties entered into a Mutual Agreement to End Tenancy effective May 15, 2020. As such, and pursuant to section 44(1)(c), this tenancy ended on May 15, 2020.

I accept the Landlord's undisputed testimony that he did not reinstate the tenancy. I therefore find the Landlord is entitled to an Order of Possession. As the effective date of the Mutual Agreement has passed, the Order of Possession shall be effective two days after service on the Tenant.

The Landlord may file and enforce the Order in the B.C. Supreme Court. The Tenant is cautioned that any costs incurred by the Landlord to enforce the Order of Possession may be recoverable from the Tenant.

Having been substantially successful, I find the Landlord is entitled to recover the \$100.00 filing fee; pursuant to section 72 of the *Act*, I permit the Landlord to retain \$100.00 of the Tenant's security deposit as recovery of these funds.

Conclusion

The Landlord is entitled to an Order of Possession pursuant to the Mutual Agreement to End Tenancy.

The Landlord may recover the filing fee by retaining \$100.00 from the Tenant's security deposit.

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 06, 2020

Residential Tenancy Branch