



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING CHARITABLE
ASSOCIATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPN FFL

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) for an order of possession based on the tenant's notice to end tenancy, and to recover the cost of the filing fee.

An agent for the landlord ES (agent) and the tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The tenant confirmed that they were served with the application and documentary evidence and had the opportunity to review that evidence prior to the hearing. The tenant also confirmed that they did not serve any documentary evidence on the landlord in response to the application by the landlord. I find the tenant was sufficiently served in accordance with the Act.

Preliminary and Procedural Matters

The parties at the start of the hearing agreed that a mutual agreement to end the tenancy was signed by the parties effective May 31, 2020 and that the tenant has been unable to find a new rental unit due to the pandemic. As a result, I amend the landlord's application pursuant to section 64(3) of the Act as I find the tenant would know or ought to have known that the landlord was also seeking an order of possession based on a mutual agreement based on the evidence presented and agreed upon by the tenant.

The parties confirmed their email addresses during the hearing and were advised that the decision would be emailed to the parties.

Issues to be Decided

- Is the landlord entitled to an order of possession based on a mutual agreement between the parties?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A five-month fixed-term tenancy began on May 1, 2011 and reverted to a month to month tenancy after the first five months of the tenancy. The parties agreed that the tenant's current portion of subsidized rent is \$474.00 per month and is due on the first day of each month. The parties also agreed that the tenant paid a security deposit of \$450.00 at the start of the tenancy, which the landlord continues to hold.

A copy of the signed Mutual Agreement to End a Tenancy document (mutual agreement) was submitted in evidence and is signed by the parties and indicates that the tenancy will end on May 31, 2020 at 1:00 p.m. The tenant stated that they have not vacated due to the pandemic as they have been unable to find a new rental unit.

The agent stated that they are seeking an order of possession and that the tenant has failed to pay any money for use and occupancy for August 2020. The tenant blamed the agent for advising the Ministry responsible for income assistance to not pay the rent, which is not supported by any documentary evidence.

The landlord is also seeking the recovery of the cost of the filing fee.

Analysis

Based on the documentary evidence from the landlord and testimony provided by the parties during the hearing, and on the balance of probabilities, I find the following.

Order of possession - I find that pursuant to section 44(1)(c) of the Act the parties mutually agreed in writing to end the tenancy on May 31, 2020 at 1:00 p.m. This is supported by the mutual agreement submitted in evidence. Therefore, I find the tenancy ended on May 31, 2020 at 1:00 p.m. and that the tenant has been over-holding in the rental unit without permission ever since that date and time. Therefore, I grant the landlord an order of possession effective **two (2) days** after service on the tenant.

As the landlord has succeeded with their application, I grant the landlord the recovery of the filing fee in the amount of **\$100.00** pursuant to section 72 of the Act.

I authorize the landlord to deduct **\$100.00** from the tenant's \$450.00 security deposit in full satisfaction of the recovery of the cost of the filing fee pursuant to sections 67 and 72 of the Act. I find the tenant's security deposit is now \$350.00 as a result, effective immediately.

Conclusion

The landlord's application is fully successful.

The tenancy ended May 31, 2020 at 1:00 p.m. The landlord has been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia. The tenant is cautioned that costs of such enforcement may be recoverable from the tenant by the landlord.

This decision will be emailed to the parties. The order of possession will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: August 31, 2020

Residential Tenancy Branch