



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties provided their email addresses at the hearing and agreed to receive my written decision at those email addresses.

The tenant said that by way of an email on June 23, 2020, and by way of a handwritten notice on June 30, 2020, they provided the landlord with a notice to end this tenancy by July 31, 2020. The Landlord confirmed that they received both of these notices to end this tenancy from the tenant as declared by the tenant.

The tenant confirmed that the landlord handed them a copy of the landlord's dispute resolution hearing package on July 14, 2020. The landlord entered into written evidence a copy of a document signed by the tenant attesting to the tenant's receipt of the dispute resolution hearing package from the landlord on July 14, 2020. The only written evidence presented by the landlord for this hearing were documents signed by the tenant or the tenant's own emails and written notice to end this tenancy. The tenant had no objection to the landlord's submission of these documents into written evidence. I find that the above documents were served in accordance with sections 88 and 89 of the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession on the basis of the tenant's notice to end this tenancy by July 31, 2020? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The parties confirmed that this tenancy for the entire rental dwelling, comprised of an upper suite where the tenant resided, and a lower suite rented by the tenant to others, began on November 8, 2015, by way of a one-year fixed term. Monthly rent for the whole property was originally set at \$1,900.00. When the fixed term expired, the tenancy continued as a month-to-month tenancy. Monthly rent by the end of the tenancy was set at \$2,231.10, payable on the first of each month.

The parties confirmed that the tenant surrendered vacant possession of the upper suite where they were residing by July 31, 2020. The tenant testified that when they checked with representatives of the Residential Tenancy Branch (the RTB), they were informed that they could not issue a notice to end tenancy to the occupants in the lower suite during the State of Emergency in place during the global COVID-19 pandemic.

The tenant stated that the landlord had given them permission to rent the lower suite to someone else. While the landlord did not dispute this testimony, they testified that they did not know who was occupying the lower suite. When the tenancy ended, the landlord testified that the occupants in the lower suite advised the landlord that the tenant represented himself as their landlord and owner of the property. The landlord maintained that the tenant was responsible for ensuring that the entire premises that they were renting from the landlord since 2015 was vacated at the end of their tenancy on July 31, 2020.

The landlord testified that they had accepted a partial rent payment of \$400.00 from the occupants in the lower suite of this rental property for August 2020. When the landlord accepted this partial payment, the landlord said that they emphasized to the occupants in the lower suite that they were not creating a new tenancy with them and fully expected them to vacate the premises by end of August 2020. The landlord said that the occupants are planning to provide a further payment for the month of August 2020. The landlord testified that the lower suite residents have sent the landlord a text message confirming that they will be vacating the premises by the end of August 2020.

The tenant disputed the landlord's application for the recovery of their \$100.00 filing fee. The tenant said that there was no need for the landlord to have initiated this application for dispute resolution as this application was filed on July 14, 2020. This occurred more than two weeks after the tenant gave their written notice to end this tenancy, and two weeks before the tenant was scheduled to vacate the premises.

Analysis

Paragraph 55(2)(a) of the *Act* establishes that a landlord may request an order of possession of a rental unit by making an application for dispute resolution with respect to a notice to end the tenancy given to the landlord by the tenant. Although the tenant's notice to end this tenancy only indicated that the tenant would be vacating the portion of this rental dwelling where the tenant had been residing, there is no indication that there was any type of tenancy established between the occupants in the lower rental suite and the landlord. As such, and in accordance with the RTB's Policy Guidelines, the occupants in the lower rental suite have no standing pursuant to the *Act*. As such, whatever relationship was created between the tenant and the occupants of the lower rental suite cannot survive the tenant's own tenancy with the landlord.

The tenant did not dispute the landlord's request for an Order of Possession based on the tenant's failure to surrender vacant possession of the entire rental premises that they committed to rent when this tenancy began. The landlord's acceptance of a payment of \$400.00 from the occupants of the lower rental suite for the month of August 2020 allows them to remain in the lower rental suite until the end of August 2020. As the occupants in the lower rental suite have no standing under the *Act* with respect to the original tenancy and have overstayed the end of the only tenancy the landlord established with the tenant for this rental property, I allow the landlord's application to end this tenancy by August 31, 2020, the final date when the occupants are allowed to remain in the rental unit.

In considering the landlord's application to recover their filing fee from the tenant pursuant to section 72 of the *Act*, I attach little significance to the tenant's claim that the landlord initiated the application for dispute resolution prematurely. In fact, the tenant did not surrender all of the rental premises they were legally required to surrender at the end of this tenancy. Even now, the lower rental suite remains occupied by individuals secured by the tenant. The tenant was receiving payments from these individuals and there is no evidence that the landlord ever received any direct payments from the lower rental suite residents until the tenant moved from the rental property by July 31, 2020.

I do recognize that the State of Emergency established during the current COVID-19 pandemic has presented problems for the tenant. In addition to the tenant's own financial issues that gave rise to ending this tenancy, it has created an obstacle in enabling the tenant to ensure that the landlord was able to obtain vacant possession of the entire rental premises they had rented from the landlord. However, the tenant was the one who issued the notice to end tenancy to the landlord. The tenant was not issued a Notice to End Tenancy by the landlord. Since it was the tenant's decision to end this tenancy, they bear the burden of ensuring that the landlord does not incur additional costs involved in obtaining vacant possession of the entire rental premises they rented from the landlord. The landlord had no contractual relationship with the occupants of the lower rental suite, at least not until they agreed to let them stay in lower rental suite for the month of August. For these reasons, I find that the landlord should not be held responsible for the problems that the tenant encountered in ensuring that vacant possession of the entire rental premises the tenant rented could be surrendered to the landlord by July 31, 2020.

As the landlord was successful in this application and did need to apply for dispute resolution to obtain an Order of Possession enabling them to obtain all of the rental premises the tenant rented from the landlord, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The landlord is provided with a formal copy of an Order of Possession effective August 31, 2020. Should the tenant or any occupant of the rental premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia. The landlord is provided with a monetary Order in the amount of \$100.00 in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court. 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: August 06, 2020

Residential Tenancy Branch