



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 for mutual agreement to end tenancy, pursuant to section 55; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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.

The landlord testified that she posted her application for dispute resolution on the tenant's door on July 9, 2020. A witnessed proof of service document stating same was entered into evidence. I find that the tenant was deemed served in accordance with sectionS 89 and 90 of the *Act*, on July 12, 2020.

Issues to be Decided

1. Is the landlord entitled to an Order of Possession for mutual agreement to end tenancy, pursuant to section 55 of the *Act*?

2. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began on October 1, 2018 and is currently ongoing. Monthly rent in the amount of \$760.00 is payable on the first day of each month. A security deposit of \$380.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that she and the tenant signed a Mutual Agreement to End a Tenancy (the "First Mutual Agreement") on January 11, 2020, effective April 15, 2020. The First Mutual Agreement was entered into evidence and states that the tenant is entitled to her last month's rent for free.

The landlord testified that the tenant requested an extension to remain in the subject rental property until April 30, 2020, and still receive the last month's rent for free. The landlord testified that she agreed, and the parties signed a new Mutual Agreement to End a Tenancy (the "Second Mutual Agreement") on March 18, 2020 effective April 30, 2020. The Second Mutual Agreement was entered into evidence.

The landlord testified that the tenant informed her that she could not move out on April 30, 2020 because of COVID 19. The landlord testified that once the moratorium on evictions from the Residential Tenancy Branch was lifted, she filed this application. This application was filed on July 3, 2020.

The landlord testified that on July 31, 2020 she received a one month notice to end tenancy from the tenant effective August 31, 2020. The landlord testified that the tenant has paid all of August's rent and that she is seeking an Order of Possession effective August 31, 2020. The landlord testified that the tenant did not pay May 2020's rent.

Analysis

Section 55(2)(d) of the *Act* states that a landlord may request an order of possession of a rental unit if the landlord and tenant have agreed in writing that the tenancy is ended.

Based on the landlord's testimony and the First and Second Mutual Agreements entered into evidence, I find that the tenant agreed to move out of the subject rental property on April 30, 2020 and failed to do so. Accordingly, I find that the landlord is entitled to an Order of Possession.

As the landlord was successful in her application for dispute resolution, I find that she is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$100.00 from the tenant's security deposit.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on August 31, 2020**, which should be served 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: August 07, 2020

Residential Tenancy Branch