



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Landlords under the *Residential Tenancy Act* (the “Act”), seeking:

- An Order of Possession for the rental unit pursuant to section 55 (2) (a) of the Act; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord K.D.K. (the “Landlord”), who was also acting as an agent for the other Applicants. Neither the Tenants nor an agent acting on their behalf attended. The Landlord provided affirmed testimony and was given the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondents must be served with a copy of the Application and Notice of Hearing. As neither the Tenants nor an agent acting on their behalf attended the hearing, I confirmed service of these documents as explained below.

The Landlord testified that the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, the Notice of Hearing, and their original documentary evidence package, were sent to the Tenants by registered mail on July 13, 2020. As the Tenant G.C. still resides in the rental unit, the registered mail was sent to them at the rental unit address. As the Tenant S.P. no longer resides in the rental unit, the registered mail was sent to them at their forwarding address. The Landlord provided me with the registered mail tracking numbers and receipts and the Canada Post website confirms that the registered mail was sent as described above and received by G.C. on July 16, 2020, and S.P. on July 13, 2020. As a result, I find that the Tenants were

served the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, the Notice of Hearing, and the Landlords' original documentary evidence package in accordance with the *Act* and the Rules of Procedure as set out above.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts, evidence and issues in this decision.

At the request of the Landlord, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the Application.

Preliminary Matters

Preliminary Matter #1

The Landlord stated that "basement" is missing from the rental unit address listed on the Application and sought to amend the Application in the hearing. Rule 4.2 of the Rules of Procedure states that in circumstances that can reasonably be anticipated, the application may be amended at the hearing. Based on the tenancy agreement and the other documentary evidence before me for consideration, I am satisfied that the Tenants knew or ought to have known, that the Application pertained to the "basement" of the address listed, as that is the address for the rental unit. As a result, I amended the address listed in the Application to include the word "basement", pursuant to rule 4.2 of the rules of Procedure.

Preliminary Matter #2

In addition to the documentary evidence sent to the Tenants by the Landlords with the Notice of Dispute Resolution Proceeding Package, the Landlord stated that additional documentary evidence was served on the Tenant's by posting it to the doors of their respective residences on July 30, 2020. As a result, and as there is no evidence before me to the contrary, I find that these documents were deemed served three days later, on August 3, 2020, pursuant to section 90 (c) of the *Act*. As this date complies with the service of evidence timelines set out in the Rules of Procedure, I therefore accepted this documentary evidence for consideration.

The Landlord stated that one additional document was served on the Tenant G.C. in person on August 2, 2020, in relation to this Application. As there is no evidence before me to the contrary, I find that this document was personally served on the Tenant G.C. on August 2, 2020 and as this date complies with the service of evidence timelines set

out in the Rules of Procedure, I therefore accepted this documentary evidence for consideration but only in relation to G.C., as it was not served on S.P.

Preliminary Matter #3

In addition to the evidence served as stated above, the Landlord stated that they submitted new and relevant evidence to the Residential Tenancy Branch (the "Branch") on August 12, 2020. The Landlord stated that this was not provided to the Branch at an earlier date, as it is a search warrant for the rental unit and was not received by them until August 11, 2020.

Although I agree that this evidence could not have been provided to the Branch at an earlier date, during the hearing the Landlord acknowledged that they did not give a copy to the Tenants. The ability to know the case against you and to submit evidence and testimony in your defense is fundamental to the dispute resolution process. As a result, I find that it would be a breach of both the Rules of Procedure and the principles of natural justice to accept this late evidence for consideration in this hearing as it has not been served on the Tenants as required by the *Act* and the Rules of Procedure, and therefore the Tenants could not reasonably have been aware that the Landlords intended to rely on this document at the hearing. As a result, I excluded this late documentary evidence from consideration.

Issue(s) to be Decided

Are the Landlords entitled to an Order of Possession for the rental unit pursuant to section 55 (2) (a) of the *Act*?

Are the Landlords entitled to recovery of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The fixed-term tenancy agreement in the documentary evidence before me, signed by the parties on December 2, 2019, states that the tenancy commenced on December 15, 2019, and was set to transition to a month to month tenancy effective December 15, 2020. The tenancy agreement states that rent in the amount of \$1,400.00 is due on the first day of each month and that a security deposit in the amount of \$700.00 was to be paid by the Tenants. Both G.C. and S.P. are listed as tenants.

The Landlord stated that on June 24, 2020, the Tenant S.P. gave written notice to end the tenancy, stating that they had already moved out. A copy of the written notice was provided for my review and consideration. The Landlord stated that although this was a fixed-term tenancy, they could not prevent the Tenant(s) from giving notice and therefore accepted the written notice to end the tenancy effective July 30, 2020, as the written notice had been given too late to end the tenancy at an earlier date.

The Landlord stated that although G.C. did not move out in accordance with the written notice given by S.P., they do not wish to simply remove S.P. from the original tenancy agreement or to enter into a new tenancy agreement with only G.C. As a result, the Landlords are seeking an Order of Possession for the rental unit. The Landlord stated that as no rent for August has been paid, \$45.00 is still owed for July, and a warrant was executed at the rental unit on August 11, 2020, they are seeking an end to the tenancy as soon as possible.

The Landlord also sought recovery of the filing fee.

No one appeared on behalf of the Tenants to provide any evidence or testimony for my consideration, despite being duly served with a copy of the Application and the Notice of Hearing.

Analysis

Based on the uncontested and affirmed testimony of the Landlord in the hearing and the uncontested documentary evidence before me, I accept that the Tenant S.P. gave written notice on July 24, 2020, to end the tenancy, and that the tenancy subsequently ended on July 30, 2020.

Although G.C. failed to vacate the rental unit in accordance with the notice to end tenancy given by S.P. and did not sign the written notice given, Residential Tenancy Policy Guideline #13 states that tenants covered by the same tenancy agreement are jointly and severally liable, and that when one tenant under a tenancy agreement gives notice to end the tenancy, the tenancy is therefore ended for all tenants covered by the tenancy agreement.

Based on the above, I therefore find that G.C.'s tenancy was also ended when S.P. gave written notice to end the tenancy and that G.C. has been overholding the rental unit since the tenancy ended on July 30, 2020.

Pursuant to section 55 (2) (a) of the *Act*, I therefore grant the Landlords an Order of Possession for the rental unit effective **two (2) days after service** on the Tenant/rental unit.

As the Landlords were successful in their Application, I grant them recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*. The Landlords are entitled to recover this amount via the attached Monetary Order, or to retain \$100.00 from any security deposit paid, but not both.

Conclusion

Pursuant to section 55 (2) (a) of the *Act*, I grant an Order of Possession to the Landlords effective **two (2) days after service of this Order**. The Landlord is provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the *Act*, I grant the Landlords a Monetary Order in the amount of **\$100.00**. The Landlords are provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. In lieu of serving and enforcing this Monetary Order, the Landlords are entitled to retain \$100.00 from the security deposit, should they wish to do so.

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 17, 2020

Residential Tenancy Branch