



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPM, FFL

Introduction

In this dispute, the landlord seeks an order of possession based on a mutual agreement to end a tenancy, pursuant to section 55 of the *Residential Tenancy Act* (the “Act”). In addition, they seek recovery of the filing fee under section 72 of the Act.

The landlord filed an application for dispute resolution on July 16, 2020 and a dispute resolution hearing was held, by teleconference, on August 24, 2020. The landlord’s two agents, and the tenant’s subtenant, attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. No issues of service were raised by the parties. The tenant did not attend.

While the subtenant is not a party to this application, and thus has no standing at the hearing, because the outcome of this application affects the third-party subtenant, a copy of this Decision will be provided to the subtenant by way of email. Further, and as explained to the subtenant during the hearing, she may have a claim against her landlord (that is, the tenant) for compensation resulting from any breach of the Act.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of this application.

Issues

1. Is the landlord entitled to an order of possession?
2. Is the landlord entitled to recovery of the application filing fee?

Background and Evidence

The tenancy started on May 1, 2020, and monthly rent is \$1,700.00. The tenant paid a security deposit of \$850.00 and a pet damage deposit of \$300.00. A copy of the written tenancy agreement was submitted into evidence.

On July 10, 2020, the landlord's agent and the tenant both signed a Mutual Agreement to End a Tenancy (the "Mutual Agreement"). The Mutual Agreement indicated that the tenancy would come to an end on August 31, 2020 at 1:00 PM. A copy of the Mutual Agreement was submitted into evidence.

The landlord's agent stated that they did have the discretion to be flexible on the date of the order of possession, and that the order would need to be for August 31, 2020. Finally, the agents said that a deduction from the tenant's security deposit would be the preferred method of compensation for the \$100.00 filing fee.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Application for Order of Possession

Section 44(1)(c) of the Act states that a tenancy may come to an end when "the landlord and tenant agree in writing to end the tenancy."

Section 55(2)(d) of the Act states that

A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution: [...]

the landlord and tenant have agreed in writing that the tenancy is ended.

In this case, the parties agreed in writing that the tenancy is to end on August 31, 2020 at 1:00 PM. Given that there is no legal reason why I cannot or should not grant an order of possession under section 55(2)(d), an order is thus granted.

Claim for Filing Fee

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was successful, I grant their claim for reimbursement of the filing fee.

The landlord is authorized, after 1:00 PM on August 31, 2020, pursuant to section 38(4)(b) of the Act, to retain \$100.00 of the tenant's security deposit in full satisfaction for recovery of the filing fee.

Conclusion

I hereby grant the landlord an order of possession, which must be served on the tenant and which shall go into effect at 1:00 PM on August 31, 2020. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: August 24, 2020

Residential Tenancy Branch