



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPM, MNRL, FFL

Introduction

In this dispute, the landlord seeks an order of possession under section 55(2)(d) of the *Residential Tenancy Act* (the “Act”). In addition, the landlord seeks compensation for unpaid rent under section 67 of the Act, and recovery of the filing fee under section 72.

The landlord filed an application for dispute resolution on July 25, 2020 and an arbitration hearing was held on August 31, 2020. The landlord attended the hearing and was given a full opportunity to be heard, present testimony, make submissions, and to call witnesses. Neither tenant attended the hearing, which lasted eleven minutes.

Regarding the service of the Notice of Dispute Resolution Proceeding package, the landlord gave evidence that these Notices were served on each tenant by way of Canada Post registered mail. A copy of the tracking number and receipt were submitted into evidence and which indicated, according to the Canada Post website, that they had been delivered to the tenant recipients.

Based on this undisputed evidence I find that the tenants were served in compliance with sections 59(3) and 89(1)(c) 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 compensation for unpaid rent?
3. Is the landlord entitled to recovery of the filing fee?

Background and Evidence

Briefly, by way of background, the tenancy started on September 1, 2017. Monthly rent was initially \$1,750.00. The tenants did not pay a security or pet damage deposit. A copy of the written tenancy agreement was submitted into evidence.

On March 27, 2020 the landlord and the tenant (F.G.) executed a Mutual Agreement to End a Tenancy (the "Agreement") in which they agreed in writing that the tenancy would end on May 31, 2020. A copy of the Agreement was submitted into evidence.

The landlord testified that the husband tenant had moved out of the property (the tenants have, or had, marital issues) but that he had continued to pay the wife tenant's rent. The wife tenant (C.G.) still lives in the rent unit. Finally, the landlord testified that the rent is all paid up until the end of August, and as such he does not require a monetary order for unpaid rent. (Accordingly, I dismiss that aspect of the landlord's claim without leave to reapply.)

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.

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: [. . .]

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

In this dispute, the landlord and the tenants (it should be noted that only one tenant in a co-tenancy is necessary to end the tenancy for all co-tenants) agreed in writing that the tenancy would end on May 31, 2020. The tenant C.G. continues to occupy the rental unit, however, the landlord believes that she "may be in the process of leaving."

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of establishing that he is entitled to an order of possession of the rental unit.

The landlord indicated that an order of possession with an effective date of 7 days after service of the order would suffice in the circumstances. This order is thus granted and is issued in conjunction with this Decision.

Finally, 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 applicant was successful, I grant his claim for reimbursement of the filing fee.

A monetary order in the amount of \$100.00 is issued in conjunction with this Decision.

Conclusion

I hereby grant the landlord an order of possession, which must be served on the tenants and which is effective seven (7) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I hereby grant the landlord a monetary order in the amount of \$100.00, which must be served on the tenants. Should the tenants fail to pay the landlord the amount owed, the landlord may file, and enforce, the order in the Provincial Court of British Columbia (Small Claims Court).

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

Dated: August 31, 2020

Residential Tenancy Branch