



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNRL, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

Both Parties attended the conference call hearing and were each given full opportunity under oath to be heard, to present evidence and to make submissions. During the hearing the Parties reached a settlement agreement on the matter of the end of the tenancy. The Parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the Parties understood the nature of this full and final settlement of this matter.

Background and Evidence

There is no written tenancy agreement. The Landlord states that the tenancy started about 5 years ago. The Tenants state that the tenancy started about 12 years ago. The Parties agree that rent of \$1,300.00 is payable on the first day of each month. The Parties agree that the Tenants paid rent in cash for August 2020 and that the Landlord returned this rent payment with a cheque that the Tenants cashed. The Parties are family members. The Landlord claims unpaid August 2020 rent.

Settlement Agreement

The Parties mutually agree as follows:

- 1. The tenancy will end on 1:00 p.m. on November 30, 2020 and the Tenants will move out of the unit by that date; and**
- 2. These terms comprise the full and final settlement of all aspects of this dispute for both Parties.**

Section 63 of the Act provides that if the parties settle their dispute during dispute resolution proceedings, the director may record the settlement in the form of a decision or order. Given the mutual agreement reached during the Hearing, I find that the Parties have settled their dispute over the end of the tenancy as recorded above. In order to give effect to the mutual agreement I grant the Landlord an order of possession for the agreed end date and time.

Remaining Issues

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Given the undisputed evidence that the Tenants paid the rent for August 2020 I find that the Landlord has not substantiated that the Tenants breached the tenancy agreement by not paying the rent. The Landlord's return of rent paid is done so at the Landlord's own peril. I dismiss the claim for unpaid rent. As this claim was not successful and as the Parties reached a mutual agreement on the claim for the order of possession, I decline to award recovery of the filing fee and this claim is dismissed.

Conclusion

I grant an Order of Possession to the Landlord effective 1:00 p.m. on November 30, 2020. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order 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 Act.

Dated: September 10, 2020

Residential Tenancy Branch