



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the Residential Tenancy Act (the “*Act*”) to an order of possession to enforce the Tenants’ Notice to end the tenancy (the “*Notice*”) dated March 17, 2020, and to recover the filing fee for this application. The matter was set for a conference call.

The Landlord and an Agent for the Landlord (the “Landlord”) attended the hearing and were each affirmed to be truthful in her testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that the documents were served to the Tenant in by posting them to the front door of the rental unit on August 31, 2020. I find that the Tenant had been duly served in accordance with sections 89 and 90 of the *Act*.

The Landlord also submitted an amendment application on August 28, 2020, requesting to add a claim for a monetary order for unpaid rent and to enforce a One Month Notice to End Tenancy for Cause (the “*Notice*”) issued on August 13, 2020. However, the Landlord was not able to show that they had served their amendment application to the Tenant by an approved method. Accordingly, I find that the Tenant had not been duly served the Landlord’s amendment application in accordance with sections 89 and 90 of the *Act*, and I will proceed in this hearing only on the matters included in the original application.

The Landlord was provided with the opportunity to present her evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Is the Landlord entitled to an order of possession, pursuant to section 45 of the *Act*?
- Is the Landlord entitled to the recovery of the filing fee for this application?

Background and Evidence

The tenancy agreement shows that this tenancy began on March 17, 2020, as a one-year fixed term tenancy. Rent in the amount of \$2,950.00 is to be paid by the first day of each month, and that the Tenant paid the Landlord a \$1,500.00 security deposit. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they had signed a mutual agreement with the Tenant to end this tenancy and that they are seeking to enforce that agreement. The Landlord submitted a copy of the mutual agreement to end the tenancy into documentary evidence.

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities:

I have reviewed the mutual agreement to end tenancy submitted into documentary evidence by the Landlord, and I find that the Landlord and the Tenant have entered into a written agreement to end this tenancy, as of March 31, 2021

Section 55(2) of the *Act* states that a landlord may request an order of possession if the tenant and the landlord have a written agreement to end the tenancy.

Order of possession for the landlord

55 (2) *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:*

- (a) a notice to end the tenancy has been given by the tenant;*
- (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;*
- (c) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;*
- (c.1) the tenancy agreement is a sublease agreement;*
- (d) the landlord and tenant have agreed in writing that the tenancy is ended.*

Therefore, I grant the Landlord an **Order of Possession** effective not later than **6:00 p.m. on March 31, 2021**. The Tenant must be served with this Order. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia. The Tenant is cautioned that the costs of such enforcement are recoverable from the Tenant.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. Although the Landlord has been successful in their application, I decline to award the Landlord the recovery of their filing fee paid for his application. As the Landlord's application was premature given this mutual agreement to end tenancy is not effective for another five months, and there is no evidence before me that this Tenant would not have moved out in accordance with this mutual agreement.

Conclusion

I grant an **Order of Possession** to the Landlord, effective not later than **6:00 p.m. on March 31, 2021**. The Tenant must be served with this Order. 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: October 8, 2020

Residential Tenancy Branch