



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN, MNDCL-S, MNRL-S, FFL

Introduction

This hearing dealt with the Landlord's Application filed under the *Residential Tenancy Act* (the "Act") for an order of possession to enforce the Tenants' Notice to End tenancy dated August 21, 2020, for a monetary order for unpaid rent or utilities, for a monetary order for compensation for damage caused by the tenant, their pets or guests to the unit, for permission to retain the security deposit for this tenancy, and to recover the cost of filing the application. The matter was set for a conference call.

The Landlord's Property Manager attended the hearing (the "Landlord") and was affirmed to be truthful in their testimony. As the Tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the Act and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified the Application for Dispute Resolution and Notice of Hearing had been sent to the Tenants by Canada Post registered mail on October 20, 2020. Section 90 of the Act determines that a document served in this manner is deemed to have been received five days later. I find that the Tenants have been duly served in accordance with the Act.

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

I have reviewed all evidence and testimony 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.

Preliminary Matters- Related Issues

I have reviewed the Landlord's application, and I note that they have applied to enforce a notice to end tenancy as well as for several other issues. I find that some of these other issues are not related to the Landlord's request to enforce the Notice. As one of these matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, I am dismissing with leave to reapply, the Landlord's claims to for a monetary order for unpaid rent or utilities, for a monetary order for compensation for damage caused by the tenant, their pets or guests to the unit, and for permission to retain the security deposit for this tenancy.

I will proceed with this hearing on the Landlord's claim to enforce the Tenants' Notice to end tenancy and to recover the filing fee paid for their application.

Issues to be Decided

- Is the Landlord entitled to an order of possession, pursuant to section 55 of the *Act*?
- Is the Landlord entitled to the recovery of the filing fee for this application?

Background and Evidence

The Landlord testified that the tenancy began on September 1, 2019. Rent in the amount of \$2,900.00 is to be paid by the first day of each month, and that the Tenants paid the Landlord a \$1,450.00 security deposit at the outset of this tenancy.

The Landlord testified that one of the Tenants to the tenancy agreement gave written notice to end the tenancy on August 21, 2020, and that the Tenants have not moved out in accordance with that Notice. The Landlord submitted a copy of the Tenant's Notice to end the tenancy into documentary evidence.

The Landlord testified that they are seeking an order of possession to enforce the Tenant's Notice.

Analysis

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

Section 45 of the *Act* permits a tenant to end a periodic tenancy by giving the landlord one month's written notice.

Tenant's notice

45 (1) *A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I have reviewed the Notice to end this tenancy, and I find that one of the Tenants to this co-tenancy issued a written Notice to the Landlord on August 21, 2020, to end this tenancy as of August 31, 2020. Based on when this Notice was served on the Landlord, I find that this Notice ended this tenancy as of September 30, 2020.

The Residential Tenancy Policy Guideline #13 Rights and Responsibilities of Co-tenants provided guidance on co-tenancy states the following:

“Where co-tenants have entered into a periodic tenancy, and one tenant moves out, If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants.”

As I have already found the Notice issued by one of these co-tenants to be valid, I find that both of the Tenants to this tenancy agreement should have moved out of the rental unit as of September 30, 2020. However, in this case, neither Tenant has moved out.

Section 55(2a) of the *Act* states that a landlord may request an order of possession if a tenant has served them with a notice to end the tenancy and the Tenant has failed to move out in accordance with that notice.

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 find that the Landlord is entitled to an order of possession, pursuant to section 55a of the *Act*, effective not later than 2 days after service of this Order upon the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are 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. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for his application. I grant permission to the Landlord to keep \$100.00 from the security deposit in full satisfaction of this award.

Conclusion

I grant an **Order of Possession** to the Landlord, effective not later than **2 days** after service of this Order upon the Tenants. The Tenants 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.

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: January 5, 2021

Residential Tenancy Branch