



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, FFT

Introduction

On February 10, 2021, the Tenant applied for a Dispute Resolution proceeding seeking an Order of Possession pursuant to Section 54 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing; however, the Landlord did not attend at any point during the 28-minute teleconference hearing. All in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing and evidence package was served to the Landlord by registered mail Priority Post on February 19, 2021 (the registered mail tracking number is noted on the first page of this Decision). He sent this package to the dispute address as this was the address that the Landlord used as a service address on the tenancy agreement. The tracking history indicated that this package was returned to sender on March 1, 2021 and it is his belief that the handwriting on the package matches that of the Landlord’s.

Based on the undisputed, solemnly affirmed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was deemed to have received the Tenant’s Notice of Hearing and evidence package five days after it was mailed. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that he signed the tenancy agreement with the Landlord on January 16, 2021, and the tenancy was supposed to start on March 1, 2021 for a fixed length of time ending on August 31, 2021. The signed tenancy agreement indicated that rent was established at \$1,595.00 per month, that it was due on the first day of each month, and that a security deposit of \$797.50 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

On February 8, 2020, the Landlord texted the Tenant informing him that the “other owner is forcing the sale of the unit, and we will not be able to proceed with your tenancy in March.” The Tenant responded with a text on February 9, 2021, advising her of her rights and responsibilities as a Landlord, and stating that as a security deposit was paid and as the tenancy agreement was signed by both parties, a tenancy has been established.

On February 12, 2021, he sent an email to the Landlord reiterating his position that he had the right to occupy the rental unit as per the tenancy agreement. Alternately, he proposed a resolution to the Landlord to relieve her of her obligation to uphold the tenancy. The Landlord responded via text message that same day. She advised that it would not be possible to honour the tenancy agreement and as she returned his security deposit, this would be the “reasonable action” to conclude the matter sufficiently. The Tenant confirmed that he received a cheque for the security deposit from the Landlord, but he did not request it, he did not cash it, and he never ended the tenancy. He advised that the Landlord wrote the dispute address as her own address on the envelope of the security deposit cheque. As well, he stated that this handwriting matched the handwriting on the returned to sender Notice of Hearing package. Therefore, it is his position that the Landlord is clearly using the dispute address as her own for service of documents and is receiving documents at that address.

As the Landlord has refused to allow the Tenant to move in, he is seeking an immediate Order of Possession. He advised that he conducted a Land Title search of the rental unit and he submitted the State of Title Certificate as documentary evidence. On this document, he pointed out that the first name of one of the co-owners of the rental unit is the same as the Landlord’s name on the tenancy agreement. While the Landlord’s last name is different on the tenancy agreement than this person listed as a co-owner of the rental unit on the State of Title Certificate, it is his belief that this is the same person.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

When reviewing the totality of the evidence before me, the consistent and undisputed evidence is that a tenancy agreement was signed between the Landlord and the Tenant on January 16, 2021. However, the Tenant has provided a State of Title Certificate that lists two, different co-owners of the rental unit, and neither of those names match the name of the Landlord on the tenancy agreement identically. I find it important to note that the Landlord's first name matches that of one of the co-owners on the State of Title Certificate, but the last name is different. Given that the Landlord texted the Tenant on February 8, 2020 stating, "I am writing to notify you know[sic] that the other owner of the suite is forcing the sale of the unit...", I find this supports the evidence on the State of Title Certificate that there are two co-owners of the rental unit.

As the Landlord's text message confirms that she is one of the owners, I find it more likely than not that the person listed as the Landlord on the tenancy agreement, while the last name is different on the State of Title Certificate, is indeed the same person. Based on a balance of probabilities, I am satisfied that the person listed as a Landlord on the tenancy agreement was a co-owner of the rental unit and would be considered a Landlord as defined by the *Act*.

As this person signed a tenancy agreement with the Tenant on January 16, 2021, I find that a tenancy was established, and a Landlord/Tenant relationship was created. Section 44 of the *Act* outlines all the manners with which a tenancy can end, and I find it important to note that there are no provisions in the *Act* which allow the Landlord to unilaterally end the tenancy by just deciding to return the security deposit.

Ultimately, as I am satisfied that a tenancy was created, and as the Landlord has illegally prevented the Tenant from occupying the rental unit pursuant to the terms of the tenancy agreement, I grant the Tenant an Order of Possession effective **immediately**. As the Landlord used the dispute address as her address for service, and as the Tenant has a service address for the Landlord on the State of Title Certificate, I Order the Tenant to serve the Landlord at these addresses to ensure that she has been served the Order of Possession. The Tenant may also attempt to serve the Landlord the Order of Possession by way of the Landlord's email address that he has previously used to communicate with the Landlord.

As an aside, the Landlord is cautioned that the Tenant may apply for monetary compensation suffered as a result of being prevented from occupying the rental unit as per the terms of the tenancy agreement.

As the Tenant was successful in his claim, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application. Pursuant to Section 72 of the *Act*, I allow the Tenant to withhold this amount from the next month's rent in satisfaction of this debt outstanding.

Conclusion

I grant an Order of Possession to the Tenant effective **immediately after service of this Order** on the Landlord. This Order must be served on the Landlord by the Tenant. Should the Landlord fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In addition, should the Landlord fail to comply with this Order, the Landlord is cautioned that the Tenant may be entitled to further monetary compensation until the Landlord provides the Tenant with vacant possession of the rental unit.

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: March 9, 2021

Residential Tenancy Branch