



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

On January 4, 2021, the Tenant applied for a Dispute Resolution proceeding seeking an Order to comply pursuant to Section 62 of the *Residential Tenancy Act* (the “Act”).

The Tenant attended the hearing with R.P. attending as her advocate. The Landlord attended the hearing as well. All parties in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package to the Landlord by hand, but she was not sure when she did so. The Landlord confirmed that he received this package by hand on January 6, 2021. Based on this undisputed evidence, I am satisfied that the Landlord was sufficiently served the Tenant’s Notice of Hearing package.

The Tenant advised that she did not serve her evidence to the Landlord. As such, I have excluded all of the Tenant’s evidence and will not consider it when rendering this Decision.

The Landlord advised that he served his evidence package to the Tenant by hand on March 16, 2021 and the Tenant confirmed that she received this package. Based on this undisputed evidence, I am satisfied that the Tenant was sufficiently served the evidence package. As service of this evidence complied with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted all of the Landlord’s 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 and written 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 to comply?

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.

All parties agreed that the tenancy started on November 1, 2020, that rent was established at \$1,400.00 per month, and that it was due on the first day of each month. The tenancy agreement indicated that a security deposit of \$700.00 was also paid; however, the Tenant alleged that she paid \$750.00 for a security deposit. This matter was not addressed in this hearing. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Tenant advised that she made this Application to dispute a form that the Landlord believes is a notice to end the tenancy. She was given this form on January 4, 2021 by the Landlord. She advised that he wrote on it, he told her it was an eviction notice, and that she had to leave. She stated that she did not understand the document, that she did not have a chance to read it, and she did not understand that it stated that she had to leave in three days. She testified that she did not mutually agree to end the tenancy and that she has paid February and March 2021 rent.

R.P. advised that this was the Tenant's first time living by herself and that she suffers from anxiety. She made other submissions which were not relevant to this Application; however, it is her position that the form served by the Landlord is not a notice to end tenancy that complies with the *Act*.

The Landlord advised that the form he used to attempt to end the tenancy was the "closest notice" that he could find on the website to end the tenancy. He alleged that there were incidents that occurred that justified why he wanted to end the tenancy. It is his position that this form is a mutual agreement to end the tenancy. He confirmed that he accepted February and March 2021 rent.

Analysis

Upon consideration of the testimony 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.

Section 44 of the *Act* sets out all the manners with which a tenancy can end.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. However, when the issue pertains to an end of tenancy, the burden of proof shifts to the Landlord.

When reviewing the totality of the evidence before me, while the Landlord claims that the form he used was a valid mutual agreement to end the tenancy, I find it important to note that this form was a proof of service form that he manipulated to suit his purposes. While he advised that this was the only form he could find, I also find it important to note that the information he relied on to support his belief that he was able to end the tenancy with 24 hours written notice was gleaned from an internet search that he conducted, but that information was relevant to another jurisdiction and not applicable to the *Act* in BC. It is evident, in my view, that the Landlord had been managing this tenancy with very little knowledge of his rights and responsibilities as a Landlord under the *Act*.

Furthermore, if the Landlord truly was of the belief that this was a mutual agreement to end the tenancy that was effective for January 7, 2021, it is not clear to me why he did not apply for an Order of Possession of the rental unit when the Tenant did not move out on that date. Moreover, if it was his belief that the tenancy was over on that date, it is additionally unclear why he continued to collect rent for February and March 2021 without applying for an Order of Possession.

Given that this document was clearly titled "Proof of Service", I accept that the Tenant was confused by this document, and that it was not her belief that she was signing a mutual agreement. As this document was manipulated by the Landlord, I am satisfied that it was not clearly established that the parties understood that this was supposed to be some sort of mutual agreement to end the tenancy. As such, I find that this is not a valid mutual agreement to end the tenancy and as a result, the tenancy continues until ended in accordance with the *Act*.

However, the Tenant is cautioned in future that she should read and understand any document prior to signing it, as ignorance is not a valid excuse.

As a note, while not specifically necessary to use, I find it important to note that the Residential Tenancy Branch provides a Mutual Agreement to End a Tenancy form that clearly outlines the intention of this document for both parties.

Conclusion

The Tenant's Application is successful as I am satisfied that there was no valid mutual agreement to end the tenancy. This tenancy continues until ended in accordance with the *Act*.

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 30, 2021

Residential Tenancy Branch