



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

ET and FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied to end the tenancy early, for an Order of Possession, and to recover the fee for filing this Application for Dispute Resolution.

At the outset of the hearing the Landlord stated that she would like to amend the Application for Dispute Resolution to remove the Tenant with the initials "MJ" as a named Respondent, as that party has vacated the rental unit. On the basis of the evidence provided by the Landlord, I find the request for amendment is reasonable and the Application for Dispute Resolution has been amended accordingly. Any Order arising from these proceedings will not name this party.

The Landlord stated that on April 07, 2021 the Dispute Resolution Package was placed under "MM"'s door. In a Proof of Service document, the Landlord declared that these documents were personally served to this individual. The Tenant with the initials "MM" stated that he found these documents under his door on April 07, 2021. On the basis of this evidence, I find that these hearing documents were served to this Tenant in accordance with section 71(2)(c) of the *Residential Tenancy Act (Act)*.

The Landlord stated that on April 07, 2021 the Dispute Resolution Package was placed under "KW"'s door. In a Proof of Service document, the Landlord declared that these documents were personally served to this individual. The Tenant with the initials "KW" stated that he found these documents under his door on April 07, 2021. On the basis of this evidence, I find that these hearing documents were served to this Tenant in accordance with section 71(2)(c) of the *Act*.

On April 06, 2021 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant with the initials "MM" with the Application for Dispute Resolution. The Tenant with the initials "MM" stated that these documents were personally served to him on April 09, 2021. As these documents were served to this individual, they would have been accepted as evidence for these proceedings, if this Respondent was the only Respondent named in the Application for Dispute Resolution.

The Landlord stated that the evidence she submitted to the Residential Tenancy Branch on April 06, 2021 was served to the Tenant with the initials "KW" with the Application for Dispute Resolution. The Tenant with the initials "KW" stated that evidence was never served to him. I find that the Landlord has submitted insufficient evidence to establish that this evidence was served to this individual. I therefore did not accept these documents as evidence in the proceedings against the Tenant with the initials "KW".

On April 16, 2021 the Landlord submitted additional evidence to the Residential Tenancy Branch. The Landlord stated that she personally served this evidence to the Tenant with the initials "MM" on April 16, 2021. This Tenant denies receiving this evidence from the Landlord. I find that the Landlord has submitted insufficient evidence to establish that this evidence was served to this individual. I therefore would not have accepted these documents as evidence in proceedings against the Tenant with the initials "MM".

The Landlord stated that the evidence she submitted to the Residential Tenancy Branch on April 16, 2021 was personally served to the Tenant with the initials "KW" on April 16, 2021. The Tenant with the initials "KW" acknowledged receipt of this evidence. Both the Landlord and the Tenant with the initials "KW" stated that this evidence relates to a prior dispute resolution proceeding. As this evidence was not served to this Tenant within the timelines established by the Residential Tenancy Branch Rules of Procedure, this evidence was not accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The Landlord, the Interpreter, and the Tenant with the initials "MM" affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The Landlord, the Interpreter, and the Tenant with the initials "MM" affirmed were advised that the Residential Tenancy Branch Rules of Procedure prohibit private

recording of these proceedings. The Landlord, the Interpreter, and the Tenant with the initials "MM" affirmed they would not record any portion of these proceedings.

Preliminary Matter #1

This hearing was scheduled to commence at 1:30 p.m. today. The Tenant with the initials "KW", did not dial into the teleconference until 1:56 p.m. and, as such, he missed a significant portion of the proceedings.

The first 26 minutes of the hearing was summarized for the Tenant with the initials "KW", although I neglected to inform him that private recordings were not permitted and I neglected to have him affirm that he would provide the truth during these proceedings.

Preliminary Matter #2

Prior to the Tenant with the initials "KW" attending the hearing, the Landlord stated that:

- the Tenant with the initials "MM" moved into the rental unit on July 31, 2020;
- the parties did not sign a written tenancy agreement;
- the Tenant with the initials "MM" agreed to pay monthly rent of \$750.00;
- the Tenant with the initials "MM" had a private room in the residential complex and he shared common areas with other occupants of the complex; and
- the Tenant with the initials "MM" occupied his rental unit on the basis of his own tenancy agreement, which was unrelated to the tenancy agreement she has with the Tenant with the initials "KW", who moved into the rental unit on June 01, 2020.

Prior to the Tenant with the initials "KW" attending the hearing, the Tenant with the initials "MM" stated that:

- he moved into the rental unit on August 01, 2020;
- he did not sign a written tenancy agreement;
- he agreed to pay monthly rent of \$750.00;
- he had a private room in the residential complex and he shared common areas with other occupants of the complex; and
- he occupied his rental unit on the basis of his own tenancy agreement, which was unrelated to the tenancy agreement the Tenant with the initials "KW" had with the Landlord, who moved into the rental unit prior to him.

On the basis of the undisputed evidence presented by the Landlord and the Tenant with the initials "MM", the Tenant with the initials "MM" and the Tenant with the initials "KW"

rent separate rooms in this residential complex and they have separate tenancy agreements with the Landlord.

Section 58(1) of the *Act* allows a landlord to apply for a dispute resolution “in relation to a dispute with the their tenant in respect of any of the following:

- (a) rights, obligations and prohibitions under this *Act*;
- (b) rights and obligations under the terms of a tenancy agreement that
 - (i) are required or prohibited under this *Act*, or
 - (ii) relate to
 - (A) the tenant's use, occupation or maintenance of the rental unit, or
 - (B) the use of common areas or services or facilities.

Section 58(1) of the *Act* does not permit a landlord to file one Application for Dispute Resolution in relation to two separate tenants who occupy a residential complex on the basis of two separate tenancy agreements.

In circumstances such as these, where the Landlord is seeking to end the tenancy of two tenants who are occupying a residential complex on the basis of two separate tenancy agreements, the Landlord was required to file two separate Applications for Dispute Resolution. Had the Landlord filed two separate Applications for Dispute Resolution, the Residential Tenancy Branch may have joined the two applications in accordance with Rule 2.10 of the Residential Tenancy Branch Rules of Procedure.

As the Landlord did not file two separate Applications for Dispute Resolution, the Landlord was advised that she must amend the Application for Dispute Resolution to either remove the Tenant with the initials “MM” as a named Respondent, who was present at the hearing, or to remove the Tenant with the initials “KW” as a named Respondent, who was not present at the hearing while this matter was being discussed.

The Landlord stated that she wished to amend the Application for Dispute Resolution to remove “MM” as a named Respondent, as he has already agreed to move out of the rental unit. I find this request for amendment is reasonable and the Application for Dispute Resolution has been amended accordingly. Any Order arising from these proceedings will not name the Tenant with the initials “MM”.

As the Tenant with the initials “MM” was being advised that he was no longer named as a party to the matter, the Tenant with the initials “KW” joined the teleconference. The Tenant with the initials “MM” exited the teleconference shortly thereafter.

Issue(s) to be Decided

Is the Landlord entitled to end this tenancy early; to an Order of Possession on the basis that the tenancy is ending early, pursuant to section 56(1) of the *Residential Tenancy Act (Act)*; and to recover the filing fee pursuant to section 72(1) of the *Act*.

Background and Evidence

After considerable discussion about the terms of the tenancy agreement the Landlord has with the Tenant with the initials "KW" and the reasons the Landlord wishes to end this tenancy early, the Landlord and the Tenant with the initials "KW" entered into a settlement agreement in regard to this Application for Dispute Resolution. As the parties entered into a settlement agreement, the details of the testimony given at these proceedings are not being recorded here.

The Landlord and the Tenant with the initials "KW" mutually agreed to settle all issues in dispute at these proceedings under the following terms:

- the tenancy will end, by mutual agreement, on April 30, 2021;
- the Tenant will vacate the rental unit by April 30, 2021;
- providing the Tenant vacates the rental unit by April 30, 2021, the Landlord will, on April 30, 2021, return the Tenant's security deposit of \$325.00 and will pay \$1,850.00 to the Tenant; and
- the Tenant will not be required to pay rent for April of 2021.

The aforementioned settlement agreement was summarized for the parties on at least two occasions. The Landlord and the Tenant with the initials "KW" clearly indicated their intent to resolve this dispute under these terms.

The Landlord and the Tenant with the initials "KW" each acknowledged that they understood they were not required to enter into this agreement and that they were doing so voluntarily.

The Landlord and the Tenant with the initials "KW" each acknowledged that they understood the agreement was final and binding.

Analysis

The parties have mutually agreed to settle all issues in dispute at these proceedings in accordance with the aforementioned terms.

Conclusion

On the basis of the settlement agreement reached by the parties, I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on April 30, 2021. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

On the basis of the settlement agreement reached by the parties, I grant the Tenant a monetary Order in the amount of \$2,175.00. This Order is only enforceable if the Tenant vacates the rental unit by April 30, 2021. In the event the Tenant vacates the rental unit by April 30, 2021 and the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced by that Court.

Dated: April 22, 2021

Residential Tenancy Branch