



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, FFL

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to obtain an order of possession based on a signed Mutual Agreement to End Tenancy dated December 2, 2020 (Mutual Agreement).

An agent for the landlord SW (agent) and their assistant, RI (assistant) appeared at the teleconference hearing and the agent gave affirmed testimony. The assistant was observing only. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding document dated February 18, 2021 (Notice of Hearing), application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence were served on each tenant by registered mail, each with their own package, to the tenant at the rental unit address on February 18, 2021. The Canada Post registered mail tracking numbers were submitted in evidence and have been included on the style of cause and identified as 1 and 2 respectively. According to the Canada Post online registered mail tracking website, both packages were mailed on February 18, 2021 and after two notice cards, were unclaimed and marked as "Return to Sender". Pursuant to section 90 of the Act, documents sent by registered mail are deemed served 5 days after they are mailed. Therefore, I find both tenants were deemed served as of February 23, 2021. Given the above, I find this matter to be unopposed by the tenants who have been deemed served.

Preliminary and Procedural Matters

The agent was informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The agent was also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the agent was informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The agent did not have any questions about my direction pursuant to RTB Rule 6.11.

In addition, the agent confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. As the agent did not have an email address for the tenants, the decision will be sent by regular mail to the tenants. The agent also requested the filing fee during the hearing.

Issues to be Decided

- Is the landlord entitled to an order of possession based on the signed Mutual Agreement?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The agent stated that the tenants paid a security deposit of \$671.00 at the start of the tenancy in March 2010. The landlord continues to hold the tenants' security deposit.

The agent presented the signed Mutual Agreement in evidence which supports that both the landlord and the tenants signed the Mutual Agreement to End the Tenancy on December 2, 2020, with an effective vacancy date of January 31, 2021 at 1:00 p.m. The agent testified that the tenants have refused to vacate the rental unit and as a result, the landlord is now seeking an order of possession and the filing fee.

The agent was asked if May 2021 money for use and occupancy has been paid in full, and the agent stated that it was not paid in full and as a result, the landlord is seeking a 2-day order of possession.

Analysis

Based on the undisputed documentary evidence of the landlord and undisputed testimony provided by the agent during the hearing, and on the balance of probabilities, I find the following.

Order of possession – Section 44(1)(c) of the Act states that a tenancy ends if the landlord and tenants agree in writing to end the tenancy. Therefore, pursuant to section 44(1)(c) of the Act, I find the tenancy ended on January 31, 2021 at 1:00 p.m. based on the Mutual Agreement signed by the parties before me. In addition, as the tenants failed to vacate the rental unit on that date, and continue to occupy the rental unit, I grant the landlord an order of possession effective **two (2) days** after service on the tenants.

As the landlord's application was successful and pursuant to section 72 of the Act, I grant the landlord **\$100.00** for the recovery of the cost of the filing fee under the Act. Given the above, I authorize the landlord pursuant to section 67 and 72 of the Act to retain \$100.00 from the tenants' security deposit of \$671.00 in full satisfaction of the recovery of the cost of the filing fee. I find that the tenants' new security deposit balance is \$571.00 effective immediately, pursuant to section 62(3) of the Act.

Conclusion

The landlord's application is fully successful.

The tenancy ended on January 31, 2021 at 1:00 p.m. based on the signed Mutual Agreement before me. The tenants have been overholding the rental unit since that date.

The landlord is granted an order of possession effective two (2) days after service on the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia. The tenants are reminded that they could be held liable for all costs related to enforcing the order of possession.

The landlord has been authorized pursuant to section 67 and 72 of the Act, to retain \$100.00 from the tenants' security deposit of \$671.00 in full satisfaction of the recovery of the cost of the filing fee. The tenants' new security deposit balance is \$571.00 effective immediately, pursuant to section 62(3) of the Act.

The decision and order of possession will be emailed to the landlord. The decision will be sent by regular mail to the tenants. The landlord must serve the order of possession on the tenants.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 13, 2021

Residential Tenancy Branch