



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession as a result of a mutual agreement to end the tenancy; and to recover the filing fee from the tenants for the cost of the application.

The landlord attended the hearing with legal counsel, gave affirmed testimony, and provided evidentiary material in advance of the hearing. The tenants also attended, one of whom gave affirmed testimony and called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give submissions.

Issues with respect to the exchange of evidence were raised, which are dealt with in this Decision.

Issue(s) to be Decided

Has the landlord established that the parties entered into a mutual agreement to end the tenancy?

Background and Evidence

The landlord testified that this fixed-term tenancy began on October 1, 2014 which reverted to a month-to-month tenancy after September 30, 2015, and one of the tenants still resides in the rental unit. Rent in the amount of \$2,700.00 per month was originally payable on the last day of each month, which has been raised and is currently \$2,869.90 per month, and there are no rental arrears. On August 30, 2014 the landlord collected a security deposit from the tenants in the amount of \$1,350.00 which is still

held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a single family dwelling and a copy of the tenancy agreement has been provided as evidence for this hearing, which names both tenants, but is signed by only one of the tenants. The landlord testified that they were spouses, but no longer spouses.

The landlord has provided written submissions, which the landlord testified he has read and affirms the submissions to be true and should be adopted as evidence.

Significant changes to the rental unit were completed during the tenancy by the tenant, which were not authorized by the landlord.

A One Month Notice to End Tenancy for Cause was given to the tenants, and the parties sometime thereafter entered into a mutual agreement to end the tenancy, and the Notice was cancelled. A copy of the mutual agreement to end the tenancy has been provided as evidence for this hearing. It is dated January 29, 2021 and contains an effective date of vacancy of 12:00 p.m. on March 1, 2021. A signed copy was provided to the tenant.

The tenant testified that the landlord brought the owners to the rental home and presented them as though they were moving in. Due to improvements made by the tenant in the rental unit, the landlord told the tenant to make an offer for payment, so the tenant did so. The landlord sent a copy of the mutual agreement to end the tenancy, which the tenant signed. The landlord took it, but didn't bring the owners to the rental home to have them sign it in person, which the tenant found to be suspicious.

The landlord didn't return on March 1, 2021, the effective date of the mutual agreement, so the tenant suspected the owners were not moving in so he felt the agreement was made in bad faith.

The tenant moved out some belongings and waited for the landlord to show up to provide the agreed amount of money that the landlord had promised in the mutual agreement. The tenant further testified that the landlord brought people to the rental home whom he said were the owners and the landlord translated. The tenant isn't even certain whether or not they knew what was being said.

The tenants who were living in rooms that the tenant had sublet to moved out on March 1, 2021 and returned on March 2, 2021.

The tenant's witness testified that he assisted the tenant with putting together the evidence packages. The evidence marked "C" was submitted the evening before this

hearing and was in response to the landlord's late evidence, and if not accepted, the landlord's late evidence should also not be accepted.

The witness testified that he resides in the rental unit, but is currently out of the Country and has been since the beginning of the COVID-19 Pandemic. The witness was not involved in negotiations regarding the tenancy.

Analysis

Firstly, the tenant had testified that the landlord is not the owner and the tenant is not certain who the owner(s) is/are. The *Act* specifies that a landlord includes an agent of the landlord. In this case, the landlord named in the tenancy agreement is an agent of the owners.

The Mutual Agreement to End the Tenancy specifies that the tenant's spouse did not reside in the rental unit when it was signed, and had not resided there for quite some time. Further, the tenant's spouse did not sign the tenancy agreement, and therefore, did not make an agreement with the landlord to rent the rental unit in the first place. I am not satisfied that the tenant's spouse entered into a tenancy agreement with the landlord, and was not required to be served. Therefore, there is no need for her to sign a mutual agreement to end the tenancy. In the case of co-tenants, where a tenancy ends for one tenant, it ends for all tenants.

Where a landlord issues a notice to end a tenancy, the landlord must be able to establish that it was given in good faith. That is not the case in this tenancy.

In this case, the parties agreed in writing that the tenancy would end on March 1, 2021.

I refer to Residential Tenancy Policy Guideline 11 – Amendment and Withdrawal of a Notice to End a Tenancy, which states, in part:

“A landlord or tenant cannot unilaterally withdraw a notice to end tenancy. A notice to end tenancy may be withdrawn prior to its effective date only with the consent of the landlord or tenant to whom it is given. A notice to end tenancy can be waived only with the express or implied consent of the landlord or tenant (see section D below). It is recommended that withdrawal of a notice to end tenancy be documented in writing and signed by both the landlord and the tenant.”

There is no evidence before me that the tenant was coerced into signing the mutual agreement, and there is absolutely no question that the landlord and the tenant agreed

in writing to end the tenancy effective March 1, 2021, and that cannot be withdrawn by the tenant.

In the circumstances, I find that the landlord is entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the landlord in that amount, which may be enforced by keeping that amount from the security deposit held in trust, or by filing it with the Provincial Court of British Columbia, Small Claims division for enforcement.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 as recovery of the filing fee.

This order is final and binding and may be enforced.

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: June 17, 2021

Residential Tenancy Branch