



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, FFT

Introduction

On June 4, 2021, the Tenants 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*.

Tenant M.D. attended the hearing and the Landlord attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing and evidence package was served to the Landlord by posting it to his door on June 11, 2021 and the Landlord confirmed that he received this package. Based on the undisputed, solemnly affirmed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served the Notice of Hearing and evidence package. As such, I have accepted all of this evidence and will consider it when rendering this Decision.

The Landlord advised that he did not submit any evidence for consideration on this file.

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

- Are the Tenants entitled to an Order of Possession?
- Are the Tenants 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.

All parties agreed that the tenancy is supposed to start on July 1, 2021, that rent is established at \$2,805.00 per month, that it is due on the first day of each month, and that the rent for July 2021 has already been paid. A security deposit of \$1,403.00 was also paid. All parties agreed that they signed this tenancy agreement on June 2, 2021. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

As an aside, the parties are cautioned that Section 19 of the *Act* sets limits on the amount of a security deposit that may be collected, and that amount may not exceed half a month's rent. If the Landlord collects more than the amount allowable under this Section, the Tenant may deduct this overpayment from rent or otherwise recover the overpayment.

The Tenant advised that the Landlord "cancelled" the tenancy agreement and she contacted the Residential Tenancy Branch regarding this. She stated that it was a significant enough issue that intervention calls were made to both parties to inform them of their rights and responsibilities under the *Act*. She referenced a string of text messages between her and the Landlord, that were submitted as documentary evidence, which she believes supports her position that the Landlord wanted to cancel the signed tenancy agreement and prevent her from taking possession of the rental unit.

The Landlord confirmed that they signed the tenancy agreement on June 2, 2021 for the tenancy to start on July 1, 2021. However, the Tenant made a demand that her cleaner be used for the rental unit. He submitted that he never committed to this and he asked the Tenant to cancel the tenancy agreement as this demonstrated bad faith by the Tenant. He stated that if the Tenant apologized, he would allow her to move in.

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 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.

When reviewing the evidence before me, the undisputed evidence is that a tenancy agreement has been signed by both parties on June 2, 2021 where the tenancy is set to commence on July 1, 2021. While there may be some sort of dispute over the use of cleaners, I note that the Landlord's responses in the text messages submitted contains the following statements:

- "We can cancel it, refund you the money you sent."
- "Call it off."
- "Cancelled."
- "You can sue me, see u[sic] in court."

I also find it important to note that the Landlord testified during the hearing that he would only allow the Tenant to move in provided that she apologized to him.

In my view, it is apparent to me that the Landlord has given the Tenant the impression that he would not honour the signed tenancy agreement or allow her to move in as per the terms of that tenancy agreement. I find that the Landlord's own admission during the hearing that he would not allow her to move in unless she apologized confirms this sentiment. Given this, I am satisfied that the Tenant was justified in applying for an Order of Possession in the event that the Landlord would not comply with the signed tenancy agreement and grant her vacant possession of the rental unit.

Consequently, I find that the Tenant is entitled to an Order of Possession effective at **12:00 PM on July 1, 2021**.

As the Tenant was successful in her claims, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application. As the Tenant has already paid July 2021 rent, and 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 on **July 1, 2021 at 12:00 PM**. 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 apply for 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: June 29, 2021

Residential Tenancy Branch