



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bayshore Canada Ventures ULC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPM

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order of possession under a Mutual Agreement to End Tenancy ("Mutual Agreement") pursuant to section 55.

Preliminary issues are addressed as follows.

1. Attendance

Both parties attended the hearing. The hearing was held by teleconference. The tenant exited the teleconference call at 9:43 am, rejoined at 9:46 and exited finally at 9:47 for the remainder of the hearing. The parties had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

2. Service of Notice of Hearing and Application for Dispute Resolution

The landlord testified that the tenant lives next door to the agents. The agent MC testified she personally served the tenant with the Notice of Hearing and Application for Dispute Resolution on May 11, 2021.

I have considered the landlord's testimony and the tenant's presence at the start of the hearing. I find the landlord has served the tenant as required under the Act.

3. *Inappropriate Behaviour by the Tenant during the Hearing*

Section 10 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* states the following:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator’s direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

In the short time the tenant attended the hearing, he demanded that I repeat my name three times. He claimed he could not hear me. When I replied more loudly, the tenant asked me why I was yelling at him. The tenant repeatedly interrupted me. The tenant seemed upset, argumentative, and disappointed an adjournment was not granted as he requested.

The hearing took longer at 47 minutes because of the behaviour by the tenant.

4. *Settlement*

Section 63 of the Act allows an Arbitrator to assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision and include an Order.

I attempted to assist the parties to resolve this dispute by asking the tenant at the outset of the hearing if he intended to move out. The tenant responded in the affirmative but would not commit to a move-out date. The tenant exited the hearing twice as stated above without a move-out date being agreed upon.

The following testimony and evidence were heard, and a Decision made by myself (the Arbitrator).

5. *Request for adjournment*

The tenant requested an adjournment stating that this hearing conflicted with a “court hearing”. The tenant submitted no supporting documentary evidence.

The landlord objected to the adjournment as the tenant had agreed in a Mutual Agreement to End Tenancy (a copy of which was submitted) to move out on April 30, 2021. He continued to occupy the unit without paying rent for the next three months. In the meantime, the police attended at the unit because of the behaviour of the tenant.

Rule 7.8 of the *Residential Tenancy Branch Rules of Procedure* allow parties to request that hearings be adjourned.

Residential Tenancy Branch Rule of Procedure 7.9 states that without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party’s request for an adjournment:

- The oral or written submissions of the parties;
- The likelihood of the adjournment resulting in a resolution;
- The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- Whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- The possible prejudice to each party

I have considered the tenant’s request and the above tests. I find the tenant’s claim of another court hearing conflicting with this hearing to be unsupported by any evidence; I do not find the tenant’s testimony to be credible. I find the tenant is responsible for the scheduling of such events in any case. I find there is no likelihood of a resolution if an adjournment were granted as the tenant has overstayed by three months beyond the effective date of the Mutual Agreement with the repeated requests by the landlord that he move out. He refused during the hearing to commit to a move-out date. The tenant was provided with opportunity during the hearing to be heard but choose to conduct himself with disrespectful and hostile behaviour. I accept the landlord’s testimony that the police have been called to the unit because of the actions of the tenant and this matter must proceed. I find it important that the hearing proceed in view of all the circumstances and the testimony.

Accordingly, I denied the tenant's application for an adjournment and proceeded with the hearing.

6. Amendment

The landlord requested an amendment to the landlord's claim to include a Monetary Order of \$600.00 for outstanding rent which at the date of the hearing was a total of \$3,600.00. The landlord requested authorization to apply the security deposit to the Monetary Order.

The landlord explained that the landlord brought proceedings shortly after the tenancy ended and before the rent for the subsequent three months are accumulated.

Section 64(3)(c) and Rule 4 of the *Rules of Procedure* allow for an amendment of an application at the hearing. Rule 4 states the amendment may be allowed in circumstances that can reasonably be anticipated; if sought at the hearing, such an amendment need not be submitted or served.

The landlord testified they anticipated that the tenant would eventually vacate the unit and the landlord's obligation to return the security deposit would arise under the *Act* necessitating another application unless the issue is addressed at this hearing.

Further to Rule 4, I find the tenant could reasonably have anticipated this amendment I accordingly allow the landlord an amendment to the application to request a Monetary Order of \$600.00 to which the landlord may apply the security deposit in the same amount held in trust.

Issue(s) to be Decided

Is the landlord entitled to the relief claimed?

Background and Evidence

The landlord provided undisputed credible testimony as the tenant exited the hearing as stated above. They submitted a copy of the tenancy agreement. The landlord testified to the following background:

INFORMATION	DETAILS
Type of tenancy	Fixed term ending April 30, 2021
Tenancy agreement	submitted
Date of beginning	February 1, 2021
Date of ending	ongoing
Monthly rent payable on 1 st	\$1,200.00
Security deposit	\$600.00
Pet deposit	none
Outstanding rent at time of hearing	\$1,200.00 each month for May, June or July, 2021

The landlord requested a Monetary Order of only \$600.00 for outstanding rent totalling \$3,600.00. The landlord requested authorization to apply the security deposit to the outstanding rent.

The landlord testified that the parties entered into a Mutual Agreement to End Tenancy signed by both parties on January 27, 2021 with an effective April 30, 2021. The tenant has refused to vacate the unit.

The landlord submitted a copy of the Mutual Agreement which is in the standard RTB form.

The landlord filed an Application for Dispute Resolution on May 9, 2021 for an Order of Possession to compel the tenant to vacate.

The landlord explained they just wanted the tenant to move out. The landlord requested a Monetary Order of \$600.00, authorization to apply the security deposit to the Monetary Order, and an Order of Possession effective immediately.

Analysis

The landlord provided undisputed evidence at this hearing as the tenant did not attend.

I accept the landlord's evidence and find that the parties signed a Mutual Agreement to End Tenancy in the RTB form with an effective date of April 30, 2021.

Accordingly, I find that the tenancy ended on April 30, 2021 pursuant to section 44(1)(c) of the Act. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to Section 55 of the *Act*.

I issue an Order of Possession effective on two days notice under section 55(2)(d), (the landlord and tenant have agreed in writing that the tenancy is ended)

I find the tenant has remained in the unit without paying rent and without the landlord's consent. I find the landlord is entitled to a Monetary Order of \$600.00 as claimed for outstanding rent which I find is \$3,600.00. I authorize the landlord to apply the security deposit of \$600.00 to the Monetary Order leaving no balance owing.

I grant a Monetary Order of \$600.00 to the landlord for outstanding rent as claimed and authorize the landlord to apply the security deposit in the same amount to the award, leaving no balance.

I recommend the landlord seek the support of the RTB and the police in service of the Order of Possession.

Conclusion

I grant an Order of Possession, pursuant to Section 55 of the *Act*. I issue an Order of Possession effective on two days notice.

I grant a Monetary Order of \$600.00 to the landlord and authorize the landlord to apply the security deposit in the same amount to the award, leaving no balance.

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: July 26, 2021

Residential Tenancy Branch