



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held on July 12, 2021. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a mutual agreement to end tenancy

The Landlord attended the hearing and provided affirmed testimony. The Tenant did not attend the hearing.

The Landlord testified that she sent the Notice of Hearing along with supporting documentary evidence to the Tenant on March 26, 2021, by registered mail. Proof of mailing was provided into evidence. I find the Tenant received this package on March 31, 2021, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*.

After filing the initial application for an order of possession based on a mutual agreement to end tenancy, the Landlord has tried to amend her application to include a claim for monetary compensation. However, the Landlord did not provide sufficient evidence that she served this amendment to the Tenant in accordance with Section 89(1) of the *Act*.

An application for monetary compensation must be served in one of the following ways:

89 (1) *An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:*

(a) by leaving a copy with the person;

- (b)if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c)by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d)if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e)as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];*
- (f)by any other means of service provided for in the regulations.*

I find the Landlord has failed to sufficiently serve her amendment, which is considered her application for monetary compensation. Her initial application for an order of possession did not contain any monetary component. As such, the amendment file on June 25, 2021, for monetary compensation will not be considered, and I will only consider the grounds on her initial application, which is an order of possession based off the mutual agreement to end tenancy.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to an order of possession based on a mutual agreement to end tenancy?

Background and Evidence

The Landlord testified that monthly rent is set at \$1,530.00 and is due on the first of the month. The Landlord stated that she holds a security deposit in the amount of \$675.00.

The Landlord stated that earlier this year, on January 31, 2021, both the Landlord and the Tenant signed a mutual agreement to end tenancy (the “agreement”). The

agreement specifies that the Tenant agreed to vacate the rental unit by 12:00 pm on March 1, 2021. A copy of this agreement was provided into evidence.

The Landlord testified that the Tenant did not move out as specified by the agreement, and that he has also stopped paying rent.

Analysis

Section 44 of the Act allows for a tenancy to end by mutual agreement of the parties to the tenancy as long as the agreement is in writing.

Based on the testimony and documentary evidence, and on a balance of probabilities, I find there is sufficient evidence to demonstrate that the parties entered into a mutual agreement to end the tenancy, March 1, 2021. I accept the Landlord's undisputed submissions that the tenant continues to occupy the rental unit, as of the date of this hearing.

I find the Landlord is entitled to an order of possession based on the mutual agreement to end tenancy. This order of possession will be effective two (2) days after it is served on the Tenant.

As the Landlord's application was successful, and pursuant to section 72 of the Act I grant the Landlord the recovery of the cost of the filing fee in the amount of **\$100.00**. I **authorize** the Landlord to retain \$100.00 from the Tenant's \$675.00 security deposit in full satisfaction of the recovery of the cost of the filing fee, which I find leaves a security deposit balance of \$575.00.

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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 12, 2021