



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPN, FFL**

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 Tenant's Notice to End Tenancy ("Notice") pursuant to section 45 and 55;
- Authorization to recover the filing fee for this application pursuant to section 72.

SU and the agent MM attended for the landlords ("the landlord"). The tenant attended. All attendants had the opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

Preliminary Issue

At the outset, the tenant explained that English is his second language, and he may have difficulty comprehending what was said during the hearing. The tenant and the arbitrator discussed the tenant's concerns. The tenant acknowledged that he understood the arbitrator. After discussion, the arbitrator agreed that all testimony would be repeated at a slower rate as may be requested by tenant. During the hearing, testimony was repeated by the Arbitrator or landlord from time to time. The tenant otherwise said he understood what was said. The hearing accordingly proceeded to completion.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and reimbursement of the filing fee?

Background and Evidence

The landlord testified that she requested an Order of Possession as the tenant had twice given Notice that he would be moving out, the landlord had accepted the Notice, and then the tenant said he was not moving. The tenant refuted that he had given Notice he was moving out.

The landlord submitted a copy of the tenancy agreement dated February 18, 2021 and signed by the parties. The parties agreed on the following background of the tenancy:

INFORMATION	DETAILS
Type of tenancy	monthly
Date of beginning	March 4, 2021
Date of ending	ongoing
Monthly rent payable on 1 st	\$1,200.00
Security deposit (held by landlord)	\$600.00
Pet deposit	none
Date of landlord Application	May 28, 2021

The landlord testified that on March 1, 2021 they purchased the building in which the tenant's unit is located. However, a dispute arose between the tenant and the landlord over the provision of cable and wifi to the unit. The tenant also claimed the tenancy agreement was not properly filled out.

The landlord testified that the tenant provided notice on two occasions that he would move out. Each notice is addressed in turn.

First Notice

The landlord testified as follows. The parties routinely communicated in three ways: text

via WhatsApp, verbally, and by email. Text and email numbers and addresses remained unchanged throughout the tenancy.

The tenant sent a text to the landlord on April 30, 2021 stating he was moving out on May 31, 2021. The landlord accepted the Notice by text in reply.

A copy of the text chain was submitted which showed that on Friday, April 30, 2021, the tenant wrote,

Ok we will move out on May 31, 2021.

However, the landlord testified that the tenant then did not pay rent for the month of May. Accordingly, the landlord issued a 10 Day Notice, and the tenant paid the rent within the time allowed.

By text dated May 19, 2021, a copy of which was submitted, the landlord informed the tenant they would be inspecting the unit on May 31st and collecting the keys. Shortly thereafter, the tenant gave the landlord verbal notice he was **not** moving out.

The landlord testified that she expected the tenant to move out and had re-rented the unit effective June 1, 2021 and received a deposit. The landlord cancelled the new tenancy when the tenant informed the landlord he would not be moving out.

In his written submissions, the tenant denied that he provided Notice he was moving out. He acknowledged that he sent the text on April 30, 2021 but it must be viewed in "all the circumstances", such as the difficulty for a family like the tenants to find a place to live "as homeowners are reluctant to new tenants". The tenant also alleged fraud by the landlord in the preparation of the tenancy agreement, which the landlord denied. The tenant expressed concern the landlord would not give him back the security deposit. The text exchange indicated the landlord repeatedly assured the tenant that the unit would be inspected on the last day of the tenancy, and the security deposit would be returned if there was no damage.

Second Notice

The tenant sent the landlord an email on August 12, 2021, a copy of which was submitted. The email stated:

Is it ok to vacate the basement with just 2 week's notice? We saw a sign near to school. Reply quickly before it is gone.

The landlord replied the same day by email, a copy of which was submitted. The email stated:

I accept your intention to move in 2 weeks.

Please let me know when your actual last day would be. Also, please make yourself aware of the condition you are required to return the suite in. I can provide you a cleaning checklist for your reference.

Please note that based on the Residential Tenancy Act and our contract, you are required to give 30 days notice and to avoid you having to pay rent in September, we will do our best to have the place rented so you will not have to do that. However, if the basement is not rented by then you will be required to pay rent for September.

Please let me know what happens and what your decision is so I can move forward and make arrangements.

Shortly thereafter, the tenant verbally informed the landlord he was not moving out.

The tenant remained in the unit and testified he has no plans to move out.

Summary

The landlord requested an Order of Possession and reimbursement of the filing fee.

The tenant requested the landlord's application be dismissed without leave to reapply.

Analysis

The Act sets out how a tenancy ends. Section 44 of the Act states that a tenancy ends if a tenant gives notice to end the tenancy not earlier than one month after the date the landlord received the Notice.

Section 44(1)(a)(i) provides that a tenant may end a tenancy in accordance with section

45.

Section 45 provides as follows:

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(4) A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy].

Section 52 of the Act states to be effective, a notice to end tenancy must be in writing and provide the effective date; it must be signed and dated by the tenant.

The section provides as follows:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,

(d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and

(e) when given by a landlord, be in the approved form.

Section 55(2) of the Act states that a landlord may request an Order of Possession for a unit when a Notice to end a tenancy has been given the tenant. The section states:

55 (2) A landlord may request an order of possession of a rental unit in any of the

following circumstances by making an application for dispute resolution:

(a) a notice to end the tenancy has been given by the tenant;

[...]

(d) the landlord and tenant have agreed in writing that the tenancy is ended.

The Director may amend the Notice under section 68(1) which states:

Director's orders: notice to end tenancy

68 (1) If a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

(2) Without limiting section 62 (3) [*director's authority respecting dispute resolution proceedings*], the director may, in accordance with this Act,

- (a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy, or
- (b) set aside or amend a notice given under this Act that does not comply with the Act.

The Residential Tenancy Branch Policy Guideline # 11 Amendment and Withdrawal of Notices states that a landlord or tenant cannot unilaterally withdraw a notice to end tenancy. Only with the consent of the party to whom a notice is give, can a notice to end tenancy be withdrawn or abandoned.

The first Notice is addressed.

First Notice

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The tenant delivered a Notice to End the Tenancy to the landlord by text on April 30, 2021 stating he was moving out on May 31, 2021. The tenant did this by sending a written message to the landlord in one of the ways the parties routinely communicated. The Notice was made by the tenant and received by the landlord. I find the landlord accepted the Notice by text; the tenant then replied and confirmed he would move out at the end of May 2021. I find that the tenant intended to end the tenancy and he considered the Notice to be effective; the landlord accepted the Notice, also considering it to be effective. I find this is an effective Notice.

I find the tenant's explanation implausible that he did not intend to move out. I do not accept the tenant's evidence in this regard as credible or supported by the documents.

I find the tenant believed he was being defrauded by the landlord of his entitlement to certain services and the return of the security deposit. I find there is no evidence supporting this belief. In any event, the tenant's belief regarding these matters did not justify the tenant unilaterally changing his mind about moving out.

I find the landlord was a credible witness. I find they patiently explained the practice regarding the return of the security deposit to the tenant many times. I accept the landlord's testimony that they found a replacement tenant and received a security deposit. I find the landlord always acted consistently with a landlord who had accepted that a tenant was vacating the unit, including scheduling a condition inspection and time for the return of the keys.

I find that the landlord is not obligated to allow the tenant to rescind the Notice.

I find the landlord is entitled to an Order of Possession which I grant.

Since the effective date of the tenancy has passed, the landlord is entitled to an Order of Possession as requested, that is, effective 1:00 PM on November 30, 2021. This provides the tenant with a two-month period until the Order of Possession is effective.

Second Notice

As I have found for the landlord and granted an Order of Possession, I will not consider the second notice.

Filing Fee

As the landlord has been successful in this application, I grant the landlord reimbursement of the filing fee in the amount of \$100.00 which the landlord may deduct from the security deposit.

Conclusion

The tenant served a valid Notice to End Tenancy upon the landlord which effectively ended the tenancy on May 31, 2021. As the tenant is still in possession of the unit, the landlord is entitled to an Order of Possession on the date requested, that is, November 30, 2021.

This Order of Possession must be served on the tenant. If the tenant does not comply with this Order of Possession, it may be filed and enforced as an Order of the Courts of the Province of British Columbia.

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: September 29, 2021

Residential Tenancy Branch