



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPN, FFL**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55; and
- authorization to recover the filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlords was represented by their agent (the "landlord"). The tenant was assisted by an advocate.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The tenant confirmed receipt of the landlord's materials and testified that they have not submitted any evidentiary materials. Based on the testimony I find the tenant duly served with the landlord's materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began in April 2016 with both of the named respondents listed as co-tenants on the tenancy agreement. The monthly rent is \$1,300.00 payable on the first of each month. The landlord collected and still holds a security deposit of \$650.00 and pet damage deposit of \$650.00.

The tenant JB, the mother of the tenant ME, gave written notice on February 26, 2021 to end the tenancy on April 30, 2021. JB has vacated the rental property. The landlord now seeks an Order of Possession as the tenant ME has overheld and remains on the property after the effective date of the tenant's notice to end the tenancy.

The landlord testified that while the tenant ME has approached them to create a new tenancy agreement, they have declined to enter a new agreement. The landlord said that the tenant has not made any payment for the period that they continue to occupy the rental unit.

The tenant submits that the co-tenant JB did not intend to end the tenancy agreement but their notice was merely an attempt to have themselves removed from the agreement with tenant ME assuming all of the rights and responsibilities under the agreement. The tenant also made some submissions that they believe JB did not have capacity to give notice to end the tenancy.

Analysis

Co-tenants are described in Residential Tenancy Policy Guideline 13 as two or more tenants who rent the same rental unit under the same tenancy agreement.

In the matter before me it is evident that the tenants JB and ME were co-tenants with equal rights under the tenancy agreement and joint and severally responsible for the tenancy.

The powers and rights of co-tenants under a tenancy agreement are outlined in Residential Tenancy Policy Guideline 13 which states in relevant parts:

If the tenant gives proper notice to end the tenancy, the tenancy agreement will end on the effective date of that notice and all tenants must move out, even where the notice has not been signed by all tenants.

Co-tenants wishing to remain in the rental unit after a notice to end the tenancy has been given should discuss the situation with the landlord. If the landlord agrees to the tenant staying, the landlord and tenant must enter into a new written tenancy agreement. If a tenant remains in the rental unit and continues paying rent after the date the notice took effect, the landlord and tenant may have implicitly entered into a new tenancy agreement. The tenant who moved out is not responsible for this new agreement.

I find that the written notice given by the tenant JB is effective notice pursuant to section 45 of the Act. I find its contents to be unambiguous in stating that the tenants will provide vacant possession of the rental property. I further note that the document provides a forwarding address to which the security and pet damage deposit could be mailed which is consistent with a tenancy that is ending.

I do not find the submission of the tenant ME that the notice was merely intended to remove JB from the tenancy agreement to be consistent with the written notice. The tenant provided no documentary evidence to support their position that the tenancy was to be assumed by ME and I find their testimony to not be particularly persuasive. I find no evidence that the tenant JB had no capacity to issue the notice. I find the tenant's testimony about their family member to be of little assistance in determining that the tenant JB did not have capacity to enter into a binding agreement.

I accept the undisputed evidence of the parties that the tenant has not made any payment for rent after the date of the notice to end tenancy. I therefore find that no implicit tenancy agreement has been created by the parties.

I find that the tenant JB provided valid notice to end this periodic tenancy and the co-tenant ME is bound by the notice. I find that no new tenancy has been created between the landlord and ME and that ME has been overholding the rental unit without cause.

Accordingly, I issue an Order of Possession to the landlord. As the effective date of the notice to end tenancy has passed I issue a notice effective 2 days after service on the tenant.

As the landlord was successful in their application they are entitled to recover their filing fee from the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$100.00 of the tenant's security deposit in full satisfaction of the monetary award issued in the landlord's favour

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The security deposit for this tenancy is reduced by \$100.00 from \$650.00 to \$550.00.

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 23, 2021

Residential Tenancy Branch