



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Concert Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

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

- an Early End to Tenancy and an Order of Possession, pursuant to section 56.

Both named tenants, and the landlord's representatives, J.M. and J.R. attended the hearing. At 9:37 AM, named respondent Shelly P. attended the hearing, however, with the landlords consent she was removed as a respondent and disconnected from the proceeding. All parties in attendance were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receiving no evidence from the tenant, while the tenants confirmed receipt of the landlord's application for dispute and evidentiary package after it was sent by email on September 15, 2021 and posted on the door of the rental unit on September 21, 2021. Pursuant to sections 88 and 89 of the *Act* the tenants are found to have been served in accordance with the *Act*.

Following opening remarks, tenant S.P. confirmed she no longer resided in the rental unit. S.P. stated she had vacated the unit on August 31, 2021.

Issue(s) to be Decided

Are the landlords entitled to an Early End of Tenancy?

Background and Evidence

The tenancy in question began on October 1, 2020 and ended by way of mutual agreement to end tenancy on August 31, 2021. Rent was \$1,785.00 (inclusive of parking) and a deposit of \$1,785.00 was collected by the landlord (pet and security).

The landlord explained they served tenant W.B. with an application for an early end of tenancy because he had significantly interfered with and unreasonably disturbed another occupant of the residential property. Further, the landlords stated the tenancy had been ended by way of mutual agreement on July 19, 2021 with tenant S.P. for an August 31, 2021 end of tenancy.

Tenant S.P. confirmed she had signed this agreement and testified that she had moved out in accordance with the agreed upon move-out date.

Tenant W.B. confirmed he continued to reside in the property and alleged the mutual agreement to end tenancy had been signed under duress. Further, tenant W.B. provided significant and detailed submissions regarding his mental health status and his inability to find alternative accommodation.

In addition to the submissions made by the landlord regarding the mutual agreement to end tenancy, the landlord detailed several disturbances that tenant W.B. has purportedly been responsible for. Tenant W.B. denied all alleged disturbances and cited his ongoing mental health issues as reason for a July 8, 2021 incident which led to him being hospitalized under the Mental Health Act.

Analysis

Section 44(1)(c) of the *Act* states, “A tenancy ends only if one or more of the following applies...the landlord and tenant agree in writing to end the tenancy.” While Policy Guideline #13 notes, “A tenant can end a tenancy by giving the landlord a written notice. A tenancy may also end if the landlord and any tenant or co-tenant mutually agree in writing to end the tenancy. When a tenancy ends in these circumstances, the notice or agreement to end the tenancy applies to all co-tenants.”

This Guideline continues by stating:

When a tenant serves the landlord with a written notice to end tenancy, the effective date of the notice must be at least one month after the landlord receives the notice and on the day before rent is due. 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...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.

I find no evidence that the landlord continued to accept rent or in any way agreed to continue the tenancy with W.B. I find the tenancy ended by way of mutual agreement on August 31, 2021 and that after this date all tenants were expected to have vacated the rental unit. For these reasons, I find the landlords were successful in their application.

As the landlords were successful in their application, they are entitled to recovery of the \$100.00 filing fee. The landlords may withhold \$100.00 from the security deposit and must deal with the remaining balance in accordance with the *Act*.

Conclusion

I am granting the landlord an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the two days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

The landlords are entitled to retain \$100.00 from the security deposit.

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: October 07, 2021

Residential Tenancy Branch