



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, OLC
 OLC
 OPM

Introduction

This hearing was scheduled to convene at 11:00 a.m. this date concerning 3 applications made by the parties. In the first application the tenants applied for an order cancelling a notice to end the tenancy for cause; an order limiting or setting conditions on the landlords' right to enter to the rental unit; and for an order that the landlords comply with the *Residential Tenancy Act*, regulation or tenancy agreement. In the second application of the tenants, the tenants applied again for an order that the landlords comply with the *Act*, regulation or tenancy agreement. The landlords have applied for an Order of Possession for mutual agreement made by the parties. The applications have been joined to be heard together.

Both landlords attended the hearing and were accompanied by an agent who gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenants joined the call.

The landlords' agent testified that the tenants were served with the landlords' application, notice of this hearing and all evidence by registered mail on July 29, 2021 and have provided a Canada Post cash register receipt bearing that date as well as 2 Registered Domestic Customer Receipts addressed to the tenants, and I am satisfied that both tenants have been served in accordance with the *Residential Tenancy Act*.

Since the tenants have not joined the hearing, having made 2 applications and are well aware of the hearing, I dismiss the tenants' applications in their entirety without leave to reapply.

All evidence of the landlords has been reviewed and is considered in this Decision.

Issue(s) to be Decided

The issue remaining to be decided is:

- have the landlords established that the parties entered into a Mutual Agreement to End Tenancy?

Background and Evidence

The landlords' agent testified that this fixed term tenancy began on April 15, 2021 and was to expire on April 1, 2022, and the tenants still reside in the rental unit. Rent in the amount of \$1,300.00 is payable on the 1st day of each month, and rent for October, 2021 has not been paid. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$500.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a basement suite and the landlords reside in the upper level of the home. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlords' agent further testified that smoking is not permitted in the rental unit; the landlords' son who also resides on the property has severe asthma, and the tenants smoked in the rental unit. As a result, the landlords provided the tenants with a Mutual Agreement to End Tenancy, a copy of which has been provided for this hearing. It is dated June 10, 2021 and contains an effective date of vacancy of July 15, 2021 at 2300 hours. It is signed by both landlords and both tenants. The tenants have not yet vacated the rental unit and the landlords seek an Order of Possession.

Analysis

I have reviewed the Mutual Agreement to End Tenancy, on a form provided by the Residential Tenancy Branch, which also states: "The parties recognize that the tenancy agreement between them will legally terminate and come to and end at the date and time stated above. It is also understood and agreed that this agreement is in accordance with the Residential Tenancy Act and the Manufactured Home Park Tenancy Act, which states: "The landlord and tenant agree in writing to end the tenancy." "

The tenants have not vacated the rental unit, and I find that the landlords are entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenants.

Since the landlords have been successful with the application, the landlords are also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the landlords in that amount, and I order that the landlords may keep that amount from the security deposit held in trust, or may otherwise recover it by filing the order in the Provincial Court of British Columbia, Small Claims division for enforcement as a judgment.

Conclusion

For the reasons set out above, the applications of the tenants are hereby dismissed in their entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlords effective on 2 days notice to the tenants.

I further grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the landlords may keep that amount from the security deposit held in trust or may otherwise recover it.

This order is final and binding and may be enforced.

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 08, 2021

Residential Tenancy Branch