



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, FF

Introduction

This hearing dealt with the tenant's application (application) for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit as the tenant has been denied access; and
- to recover the cost of the filing fee.

The tenant and his advocate attended the hearing; however, the landlord did not attend.

For this reason, the matter of service of the tenant's application to the landlord was considered. The tenant stated they served the landlord with their Application for Dispute Resolution, evidence, and Notice of Hearing (application package) to the address where the landlord lives by registered mail on November 4, 2021, which is the address of the rental unit. The tenant provided the Canada Post Tracking Number to confirm this mailing. That number is listed on the style of cause page in this Decision.

I find the tenant submitted sufficient evidence to substantiate that the landlord was served notice of this hearing in a manner complying with section 89(1) of the Act and the hearing proceeded in the landlord's absence.

The tenant and advocate acknowledged they were informed that recordings of Residential Tenancy Branch (RTB) hearings are prohibited. Both parties provided their statements by affirmed testimony that they were not recording the hearing.

The tenant and advocate were provided the opportunity to present their evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

I allowed the tenant to submit additional documentary evidence after the hearing, which included a title search on the rental unit, receipts, and proof of the sender of the text message the tenant submitted with their application.

I find it was necessary to obtain this evidence in order to ensure procedural fairness to all parties.

The tenant was instructed that this additional evidence must be uploaded to the RTB electronic file by 4:00 p.m. the day of the hearing or his application would be dismissed. The tenant complied with the direction that the evidence be submitted prior to the deadline.

Issue(s) to be Decided

Is the tenant entitled to an order of possession of the rental unit and to recover the cost of the filing fee?

Background and Evidence

The tenant submitted that he and the landlord entered into a written tenancy agreement for the rental unit, naming the tenant and another tenant, 12 years old, and the respondent as the landlord. The written tenancy agreement was on RTB form-1. The written tenancy agreement listed that the tenancy created by this agreement began on November 1, 2021, for a fixed-term through October 30, 2022, a monthly rent of \$2,400 and a security deposit due of \$1,200 due. The written tenancy agreement was signed and dated by both parties on September 8, 2021. Filed in evidence was the written tenancy agreement.

The tenant said he met the landlord at the rental unit on September 8, 2021, and paid a security deposit of \$1,200 and the first month's rent of \$2,400. The tenant submitted that in all, he made three payments for a total of \$7,600, which included the monthly

rent for other months. The tenant submitted the signed receipts from the landlord, one for the monthly rent for November 2021 and the security deposit, another one for the December 2021, monthly rent, and another one for a loan of \$2,000, in which the landlord wrote the funds would be paid back with interest by September 18, 2021. Two receipts were dated September 8, and the other receipt was dated September 13, 2021.

The advocate testified they accompanied the tenant the day he met with the landlord in the rental unit, and afterwards, they reviewed the tenancy agreement. The tenant testified that the landlord told him that her husband had built a home in another city and they were moving out of the rental unit.

The tenant said he received a text message from the landlord on November 1, 2021, stating that the tenant could not move in due to an investigation into the landlord's husband about a potential tax evasion matter. The landlord said they were afraid their assets would be frozen and also that a friend would return all the funds paid by the tenant. The tenant confirmed that the funds paid to the landlord were returned, although he had no choice, as he still needs the rental unit to have a place to live. Filed in evidence were a series of text message communication between the landlord and the tenant, beginning in September 2021, including the above referenced text message. The identifying names from which the text messages originated were shown as the landlord and another individual, who was listed as the owner of the rental unit on the title search.

Analysis

Based on the undisputed testimony of the tenant and the undisputed documentary evidence before me, and on the balance of probabilities, I find the following.

I find the evidence shows that a tenancy was created between the tenant and the landlord, for a start date of November 1, 2021, based upon the signed and dated written tenancy agreement, and the payment of the monthly rent for November and December 2021, and the security deposit of \$1,200 from the tenant to the landlord. There is no evidence before me to support that the landlord has entered into a new tenancy agreement with anyone else, as they are still residing in the rental unit. Based on the undisputed evidence, I find it reasonable to conclude that the landlord simply changed their mind about renting the rental unit.

Under section 16 of the Act, the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Residential Tenancy Branch Policy Guideline states that where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances, such as the landlord is expected to provide the premises as agreed upon and in a state conforming with health and safety standards as required by law.

Section 44 of the Act applies and states:

How a tenancy ends

- 44** (1) A tenancy ends only if one or more of the following applies:
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 [*tenant's notice*];
 - (i.1) section 45.1 [*tenant's notice: family violence or long-term care*];
 - (ii) section 46 [*landlord's notice: non-payment of rent*];
 - (iii) section 47 [*landlord's notice: cause*];
 - (iv) section 48 [*landlord's notice: end of employment*];
 - (v) section 49 [*landlord's notice: landlord's use of property*];
 - (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
 - (vii) section 50 [*tenant may end tenancy early*];
 - (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
 - (c) the landlord and tenant agree in writing to end the tenancy;
 - (d) the tenant vacates or abandons the rental unit;
 - (e) the tenancy agreement is frustrated;
 - (f) the director orders that the tenancy is ended;
 - (g) the tenancy agreement is a sublease agreement.
- (2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

I have no evidence before me that the landlord ended the tenancy according to section 44 above and therefore, I find the landlord has breached section 44 of the Act. As a result of the above, I find that section 54 of the Act applies, which states:

Order of possession for the tenant

54(1) A tenant who has entered into a tenancy agreement with a landlord may request an order of possession of the rental unit by making an application for dispute resolution.

(2) The director may grant an order of possession to a tenant under this section before or after the date on which the tenant is entitled to occupy the rental unit under the tenancy agreement, and the order is effective on the date specified by the director.

(3) The date specified under subsection (2) may not be earlier than the date the tenant is entitled to occupy the rental unit.

Based on the above, and considering that I have no evidence before me that new tenants have paid rent for November or December of 2021, I grant the tenant an order of possession for the rental unit, **effective two (2) days** after service on the landlord.

The landlord is cautioned that costs of enforcement of the order of possession through the British Columbia Supreme Court, **such as bailiff fees**, are subject to recovery from the landlord.

I also grant the tenant recovery of his filing fee of \$100. As a result, I grant the tenant a monetary order in the amount of \$100.

Conclusion

The tenant's application is fully successful.

The tenant has been granted an order of possession effective two (2) days after service on the landlord. The landlord must be served with the order of possession and the order

of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The tenancy shall continue until ended in accordance with the Act.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: November 24, 2021

Residential Tenancy Branch