



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPN, MNRL-S, FFL, MNDCL

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;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord attended, assisted by family members, and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

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

The landlord testified that the notice of application and evidence was personally served on the tenant by their family member VT on July 24, 2021. VT was in attendance at the hearing and testified that they served the tenant on that date with the materials. Based on the undisputed testimonies I find the tenant duly served with the landlord's materials on July 24, 2021 in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the landlord said that there is no arrear for this tenancy as at the date of the hearing and withdrew the monetary component of their claim.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession as claimed?
Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This periodic tenancy began on October 1, 2018. Monthly rent is \$2,800.00 payable on the first of each month. A security deposit of \$1,350.00 was collected at the start of the tenancy and is still held by the landlord.

The tenant gave written notice by a note dated April 21, 2021 to end the tenancy on June 30, 2021 by which time they will have vacated the rental unit. A copy of the signed notice was submitted into documentary evidence. The document states:

I am [Tenant] moving out of the [Rental Unit address] will be vacating the suite no later than the end of June 30th 2021

Despite the unambiguous notice, the tenant failed to vacate the rental unit on the effective date of the notice and they have continued to occupy the rental unit. The landlord testified that the tenant has made payments in the amount of \$2,800.00 monthly which have been accepted for use and occupancy only. The landlord has repeatedly informed the tenant that they intend to pursue their application for an order of possession and that any payments do not reinstate the tenancy.

Analysis

Section 45(1) of the Act provides that a tenant may end a periodic tenancy by giving written notice to the landlord.

I find the written note issued by the tenant to be a clear indication of their intention to end the tenancy. An ordinary reading of the words contained is that the tenant intends to vacate the rental unit by June 30, 2021. I find that the note complies with the form and content requirements of section 52 as it is signed and dated by the tenant and provides the address of the rental unit and effective date of the notice.

I accept the landlord's undisputed testimony that any payments accepted after the effective date of the notice has not reinstated the tenancy but were solely for use and occupancy of the rental unit. I accept the testimony of the landlord and their family members that they conveyed to the tenant on multiple occasions that the tenancy ended on the effective date of the tenant's notice and they intended to seek an order of possession.

I find that the tenant gave effective notice to end this periodic tenancy on June 30, 2021. I therefore find that the landlord is entitled to an order of possession of the rental unit. As the effective date of the notice has passed I issue a notice enforceable two days after service on the tenant.

As the landlord was successful in their application they are also entitled to recover the filing fee from the tenant. 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 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 tenant**. Should the tenant 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 \$1,350.00 to \$1,250.00.

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: November 1, 2021

Residential Tenancy Branch