



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WJS CANADA
and [tenant name suppressed to protect privacy]

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;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the landlord served the tenant with the notice of hearing package and the submitted documentary evidence in person on September 17, 2021. Both parties also confirmed the tenant served the landlord with their submitted documentary evidence in person on December 29, 2021. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per 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 recovery of the filing fee?

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord seeks an order of possession of a rental unit as the tenant had provided written notice to end the tenancy and has now refused.

The landlord stated that the tenant's agent, R.C. "sent an email to Landlord C.B to end tenancy" for September 1, 2021. The landlord responded via email on June 21, 2021 accepting this notice. The landlord stated that he was able to re-rent the unit for September 1, 2021 to new tenants who gave notice to end their current tenancy for September 1, 2021. The landlord stated that a new tenant was found from outside of the community who would begin their tenancy on September 1, 2021. The landlord stated that on July 22, 2021 the tenant informed the landlord in person that he and his company were not leaving. The landlord stated that the tenant "claims to have made a mistake".

The landlord has submitted copies of the email notice by the tenant to end the tenancy and the landlord's response accepting it.

The tenant argued that "legal notice" was not given by the tenant to the landlord and as such seek an order to cancel the tenant's notice to end tenancy. The tenant stated that RTB form-51 as not completed by the landlord or tenant agreeing to service of documents via email. The tenant argued that the tenancy began on June 1, 2021 and there were issues with the tenancy concerning "mold". The tenant stated that a contracted service inspection was completed where "mold" was found. The tenant stated that the landlord had subsequently dealt with the issue to their satisfaction.

The landlord argued that the tenant has been renting from the landlord for 3 years and that the tenant's agent took over management in January 2021 and began the new tenancy at that time and not in June of 2021. The landlord stated that all primary communications were made via email with the tenant since the tenancy originally began. The landlord argued that tenant provided written notice via email dated June 17, 2021 identifying the tenant, rental address and the effective end of tenancy on September 1, 2021. The landlord further argued that the tenant's email states "Please accept my email signature as a signature for this written notice." The landlord also argued that there was no "mold" but instead mildew left due to the poor sanitary conditions left by the current tenants over the last 3 years. The landlord stated that they have been accepting rent "for Use and Occupancy Only" and providing notice to the tenant while awaiting the outcome of the dispute resolution hearing.

Analysis

Section 55 of the Act states in part that a landlord may request an order of possession of the rental unit when a notice to end tenancy has been given by the tenant.

In this case, both parties confirmed that the tenant provided notice to end the tenancy via email on June 17, 2021 to end on September 1, 2021. Both parties confirmed the landlord accepted the notice via email on June 21, 2021 via email.

Section 52 of the Act states in part that in order to be effective a notice to end tenancy must be in writing and must be signed and dated by the tenant giving notice, give the address of the rental unit and state the effective date of the notice. A review of the email notice dated June 17, 2021 shows the identified tenant, rental address and the effective end of tenancy on September 1, 2021. I also note that the tenant's email states "Please accept my email signature as a signature for this written notice."

I find that despite the tenant's claim that "legal notice" was not given by the tenant as RTB form -51 was not completed there is no statutory requirement to complete this form. This form is used to allow parties to pre-agree to the service of documents. During the hearing the tenant confirmed that he thought that the email notice to end tenancy was valid as did the landlord who accepted it as shown by the landlord's email response. On this basis, the tenant's request to set aside the tenant's emailed notice to end tenancy as an "illegal notice" is denied. The notice is valid and binding. The landlord's application for an order of possession is granted. As the landlord has been giving notice "for Use and Occupancy Only", I find that the effective end of tenancy date shall be January 31, 2022.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$100.00.

These orders must be served upon the tenant. Should the tenant fail to comply with this order, the order may be filed in the Supreme Court of British Columbia and the Small

Claims Division of the Provincial Court of British Columbia and enforced as Orders of those Courts.

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: January 13, 2022

Residential Tenancy Branch