



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, FFL

Introduction

The Landlord seeks an order for possession pursuant to s. 55 of the *Residential Tenancy Act* (the “*Act*”) after the parties signed a mutual agreement to end tenancy (the “Mutual Agreement”). The Landlord also applies for return of his filing fee pursuant to s. 72.

Z.R. appeared as Landlord. J.Y. appeared as the Landlord’s advocate. The Tenant did not attend, nor did someone attend on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

J.Y. advised that the Notice of Dispute Resolution and the initial evidence for the Landlord was served by way of registered mail sent on December 24, 2021. The initial evidence included the tenancy agreement and the Mutual Agreement. Subsequent evidence was served via USB key attached to the Tenant’s door on February 23, 2022. There was some additional evidence provided to the Residential Tenancy Branch on March 11, 2022, which I was advised was not served on the Tenant.

I find that the Notice of Dispute Resolution and the initial evidence was served in accordance with s. 89 of the *Act* by way of registered mail sent on December 24, 2021. The Landlord provides photographs of the registered mail package with the receipt confirming it was sent December 24, 2021. Pursuant to s. 90 of the *Act*, I deem that these materials were received by the Tenant on December 29, 2021.

I accept the undisputed evidence that the Landlord served additional evidence by way of USB attached to the Tenant's door on February 23, 2022. Pursuant to s. 89(2) of the *Act*, attaching evidence to a door is an approved form of service when a landlord seeks an order for possession. Accordingly, I find that the evidence up to February 23, 2022 was served in accordance with s. 89 of the *Act*. Pursuant to s. 90, I deem that this additional evidence was received by the Tenant on February 26, 2022.

The final evidence provided to the Residential Tenancy Branch on March 11, 2022 was not served, as admitted by J.Y.. As it was not served, it is not included into the record as it would not be procedurally fair to the Tenant to include it in the record.

Issue(s) to be Decided

- 1) Is the Landlord entitled to an order for possession?
- 2) Is the Landlord entitled to the return of his filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Landlord confirmed the following details with respect to the tenancy:

- The Tenant took possession of the rental unit on April 1, 2019.
- Rent of \$1,750.00 is due on the first day of each month.
- The Landlord holds a security deposit of \$875.00 in trust for the Tenant.

The Landlord provides a copy of the written tenancy agreement confirming these details.

The Landlord advises that he recently accepted an offer to sell the property. He further indicates that the buyer is seeking vacant possession of the property.

I was further advised by the Landlord that he and the Tenant signed the Mutual Agreement on October 19, 2021. The Mutual Agreement was put into evidence and indicates that the Tenant was to vacate the rental unit by 1:00 PM on December 20, 2021.

The Landlord testified that he entered into the mutual agreement with the Tenant following the sale of the property and indicates that the sale contract was originally set to close on February 28, 2022.

The Landlord and his agent indicate that the Tenant did not vacate the rental unit on December 20, 2021. The Landlord says that the Tenant's refusal to vacate the rental unit has resulted in the renegotiation of the property's closing date, with the new possession date for the buyer on March 31, 2022.

The Landlord indicates that he is uncertain whether the Tenant continues to reside within the rental unit. The Landlord still seeks the order for possession as he has not yet taken possession of the rental unit.

The Landlord and his agent indicate that the Tenant has broken off all communication and that no rationale was provided by the Tenant for their refusal to vacate the rental unit on December 20, 2021. The Landlord speculates it may be because of difficulties in finding alternate accommodations.

Analysis

The Landlord seeks an order for possession pursuant to an agreement to end the tenancy.

Pursuant to s. 55(2)(d) of the *Act*, a landlord may seek an order for possession where they and the tenant have agreed in writing to end the tenancy.

I accept the undisputed evidence provided to me by the Landlord that he and the Tenant signed the Mutual Agreement on October 19, 2021. I have reviewed the Mutual Agreement, it is signed by both parties, lists the address for the rental unit, and indicates that the Tenant is to vacate by 1:00 PM on December 20, 2021. It is in form RTB-8 provided by the Residential Tenancy Branch. I find that the parties agreed, in writing, to end the tenancy on December 20, 2021 as evidenced by the Mutual Agreement.

The Landlord indicates that he has not taken possession of the rental unit and that he is uncertain whether the Tenant continues to reside within the rental unit. I accept the Landlord's evidence that the Tenant has not communicated with the Landlord since

refusing to vacate on December 20, 2021. I further accept that the Landlord has not taken possession of the rental unit. I accept that the Tenant has likely not vacated the rental unit. Accordingly, I find that since the Tenant has not given vacant possession of the rental unit to the Landlord.

As the Tenant has refused to vacate the rental unit pursuant to the Mutual Agreement and has not to date given vacant possession, I find that the Landlord is entitled to an order for possession and shall receive that order.

Conclusion

I find that the parties had a written agreement to end the tenancy on December 20, 2021 and that the Tenant has not given vacant possession of the rental unit to the Landlord. Pursuant to s. 55 of the *Act*, I grant the Landlord an order for possession. The Tenant shall provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving this order.

As the Landlord was successful in their application, I find that he is entitled to the return of his filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Tenant pay \$100.00 to the Landlord for his filing fee. In full satisfaction of the filing fee, I direct pursuant to s. 72(2) of the *Act* that the Landlord retain \$100.00 from the security deposit.

It is the Landlord's obligation to serve the order for possession on the Tenant. If the Tenant does not comply with the order for possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that Court.

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: March 14, 2022

Residential Tenancy Branch