



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (the application) under the *Residential Tenancy Act* (the "Act") to obtain an order of possession due to the tenant breaching a fixed term tenancy agreement by failing to vacate the rental unit on the date agreed to in the fixed term tenancy agreement, and to recover the cost of the filing fee.

The Landlord attended the hearing with legal counsel. The Tenant also attended the hearing. Both parties provided affirmed testimony. The Tenant did not provide any documentary evidence, and the Tenant confirmed receipt of the Landlord's Notice of Dispute Resolution Proceeding and evidence package. I find the Landlord sufficiently served the Tenant with the Notice of Dispute Resolution Proceeding and evidence.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Is the landlord entitled to an order of possession under the *Act*?

Background and Evidence

A copy of the fixed term tenancy agreement was submitted into evidence. The tenancy began on January 1, 2021 and was for a fixed term, ending on November 30, 2021. Monthly rent of \$3,200.00 was due on the first day of each month.

As per the tenancy agreement, both parties initialed next to the term of the fixed term tenancy agreement which reads that at the end of the fixed term, the tenant must vacate the rental unit. This term in the agreement is as follows:

IF YOU CHOOSE C, CHECK AND COMPLETE D OR E

Check ☐ D) At the end of this time, the tenancy will continue on a month-to-month basis, or another fixed length of time, unless the tenant gives notice to end tenancy at least one clear month before the end of the term.

D or E ☒ E) At the end of this time, the tenancy is ended and **the tenant must vacate the rental unit.**
This requirement is only permitted in circumstances prescribed under section 13.1 of the Residential Tenancy Regulation, or if this is a sublease agreement as defined in the Act.

Reason tenant must vacate (required): Landlord personal use

Residential Tenancy Regulation section number (if applicable): 13.1

* If you choose E, both the landlord and tenant must initial here

The tenant **must move out on or before the last day of the tenancy.**

Landlord's Initials [Redacted]

Tenant's Initials [Redacted]

The signatures of both the Tenant and the Landlord were redacted from the above term. However, it was initialed by both parties on the copy provided into evidence.

The Tenant does not refute signing and agreeing to this term, and stated that he is having challenges trying to find another place to live, given the rental market. The Tenant stated he has tried to take care of the property and to accommodate the Landlord's needs but he does not have a place to move to.

The Landlord explained that they need the house back for their use, and they intend to use this property as a family property, going forward. The Tenant did not dispute that this was the Landlord's intentions.

Analysis

Section 44 of the *Act* states that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that, in the circumstances prescribed under section 97(2)(a.1), requires the tenant to vacate the rental unit at the end of the term. Section 97(2)(a.1) states that the Lieutenant Governor in Council may make regulations prescribing the circumstances in which a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate a rental unit at the end of the term. Section 13.1 of the regulations states that for the purposes of section 97(2)(a.1) of the *Act*, a landlord

may include in a fixed term tenancy agreement a requirement that the tenant vacate the rental unit at the end of the term if that landlord is an individual, and that landlord or a close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term.

It appears the Landlord made it very clear at the start of the tenancy, regarding their intentions to use the property for their own vacation use, following the end of the fixed term. The Tenant was well aware, right from the start of the tenancy, that it was time limited, and only for a term of 11 months. I accept the Landlord's explanation that they intend to use this property for their personal vacation use, going forward, and that they intend in good faith to use this property, regularly, and for themselves starting as soon as they get possession of the unit back. The Tenant did not present any evidence or statements which call into question the Landlord's intention to use the property for themselves and was mainly concerned with continuing the tenancy because he did not have a suitable alternative lined up.

Ultimately, I find the tenant breached the tenancy agreement by failing to vacate the rental unit at the end of the fixed term, which lapsed on November 30, 2021. I find the term in the tenancy agreement, is both valid and enforceable.

Therefore, pursuant to section 55 of the *Act*, I grant the landlord an order of possession **effective two (2) days** after service on the tenant.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the landlord was successful in this hearing, I also order the tenant to repay the \$100.00 fee the landlord paid to make the application for dispute resolution. I authorize the Landlord to retain \$100.00 from the \$1,600.00 security deposit, in satisfaction of the filing fee costs.

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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 21, 2022