



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, FFL

Introduction

On February 1, 2022, the Landlords applied for a Dispute Resolution proceeding seeking an Order of Possession based on a Mutual Agreement to End Tenancy pursuant to Section 55 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Landlord N.R. attended the hearing, with V.D. attending as an agent for the Landlord; however, the Tenant did not attend at any point during the nine-minute teleconference. At the outset of the hearing, I informed the parties that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

V.D. advised that the Notice of Hearing and evidence package was served to the Tenant by hand on February 10, 2022, and she referenced a signed proof of service document to corroborate this service. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was duly served with the Notice of Hearing and evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession based on the Mutual Agreement to End Tenancy?

- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

V.D. advised that the tenancy started on July 15, 2016, that rent was established at an amount of \$750.00 per month, and that it was due on the first day of each month. A security deposit of \$375.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She testified that the Landlord and the Tenant signed a Mutual Agreement to End Tenancy on December 30, 2021, with an effective end date of the tenancy of January 31, 2022 at 1:00 PM. A copy of this mutual agreement was entered into evidence. As the Tenant had not moved out by this date, the Landlords applied for an Order of Possession. She confirmed that the Tenant was given receipts for use and occupancy only for monies paid for February, March, and April 2022.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

I note that Section 55 of the *Act* allows a Landlord to submit an Application for Dispute Resolution seeking an Order of Possession based on a Mutual Agreement to End Tenancy, and I must consider if the Landlord is entitled to that Order if the agreement is valid.

As well, Section 44 of the *Act* allows a tenancy to end by mutual consent of both the Landlord and the Tenant.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

In considering this matter, I have reviewed the Mutual Agreement to End a Tenancy. I am satisfied that both an agent for the Landlord and the Tenant signed and agreed to the terms stated in that agreement. Based on the undisputed evidence before me, I am satisfied that the Landlords and Tenant agreed to mutually end the tenancy on January 31, 2022 at 1:00 PM. As the Tenant failed to vacate the rental unit by this time, I find that the Landlords are entitled to an Order of Possession. The Landlords will be given a formal Order of Possession which must be served on the Tenant. As the Tenant has paid monies for April 2022, if the Tenant does not vacate the rental unit on **April 30, 2022 at 1:00 PM**, the Landlord may enforce this Order in the Supreme Court of British Columbia.

As the Landlords were successful in this claim, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlords to retain this amount from the security deposit in satisfaction of this debt.

Conclusion

The Landlords are provided with a formal copy of an Order of Possession effective on **April 30, 2022 at 1:00 PM** after service of this Order 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.

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: April 8, 2022

Residential Tenancy Branch