



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order of possession under a mutual agreement to end a tenancy, pursuant to sections 44 and 55; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:42 P.M. to enable the tenants to call into this teleconference hearing scheduled for 1:30 P.M. The tenants did not attend the hearing. Landlord CB, represented by agent DB, attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that that DB and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed he understands it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

I accept the DB's testimony that the tenants were served with the January 27, 2022 notice of hearing and evidence (the materials) by registered mail on January 30, 2022, in accordance with section 89(2)(b) of the Act. The landlord affirmed that the mailing address of the tenants' is the address recorded on the cover page of this decision. The tracking numbers are recorded on the cover of this decision.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is

mailed. Given the evidence of registered mail the tenants are deemed to have received the materials on February 04, 2022, in accordance with section 90 (a) of the Act.

The Residential Tenancy Branch (RTB) issued a new notice of hearing on April 14, 2022 and notified both parties about the new notice of hearing on April 14, 2022.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Preliminary Issue – Landlord

Landlord CB submitted this application January 18, 2022. DB affirmed that CB sold the rental unit to AB and the completion of the sale was on February 17, 2022. DB is authorized to represent AB.

Pursuant to section 64(3)(a) and (c) of the Act, I have amended the application to remove landlord CB and include landlord AB as an applicant.

Issues to be Decided

Is the landlord entitled to:

- an order of possession under a mutual agreement to end the tenancy?
- an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

DB affirmed the tenancy started in 2010 and the tenants continue to occupy the rental unit. Monthly rent is \$825.00. The landlord did not collect a security or a pet damage deposit. Tenants DP and SF have a single verbal agreement with the landlord to rent the entire rental unit, which consists of two suites.

DB served the tenants a two month notice to end tenancy for landlord's use of the rental unit on September 30, 2021.

DB affirmed that tenant DP represents tenant SF. DB, acting as an agent of landlord CB, signed a mutual agreement to end the tenancy on September 30, 2021:

September 30, 2021

I, DB, hereby give DP + SF until March 31, 2022 to continue the rental, occupation as per our conversation, to vacate the occupancy at [rental unit's address]

Signed: DB

Signed: DP

DB affirmed that the parties mutually agreed to end the tenancy on March 31, 2022 because DB had previously informed the tenants that he would provide them with notice to end the tenancy for landlord's use of the rental unit six months before the end of the tenancy.

Analysis

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, that the notice issued to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct and sufficient cause to end the tenancy.

Section 44(1) of the Act states:

A tenancy ends only if one or more of the following applies:

(c) the landlord and tenant agree in writing to end the tenancy;

Section 55(2) of the Act states:

A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(d) the landlord and tenant have agreed in writing that the tenancy is ended.

The mutual agreement is a hand-written document signed by DB, acting as an agent for the landlords, and DP, representing co-tenant SF.

RTB Policy Guideline 30 states: "A Mutual Agreement to End Tenancy (form RTB-8) is preferred but not required."

Based on the convincing testimony offered by DB and the September 30, 2021 agreement, I find the parties mutually agreed to end the tenancy, per section 44(1)(c) of the Act.

As the tenants continued to occupy the rental unit past March 31, 2022, I issue landlord AB an order of possession, per section 55(2)(d) of the Act.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

Conclusion

Pursuant to section 55(2)(d) of the Act, I grant an order of possession to the landlord effective two days after service of this order on the tenants. Should the tenants fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

Pursuant to section 72 of the Act, I award the landlord \$100.00. The landlord is provided with this order in the above terms and the tenants must be served with this order. Should the tenants fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court 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: May 02, 2022

Residential Tenancy Branch