



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OKANAGAN MÉTIS & ABORIGINAL HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPM, MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession based on a mutual agreement to end tenancy, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 20 minutes. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The hearing began at 9:30 a.m. with me present. The landlord's agent called in late at 9:32 a.m. The hearing ended at 9:50 a.m.

The landlord's agent confirmed her name and spelling. She stated that she is an administrator for the landlord company ("landlord") named in this application and that she had permission to speak on its behalf at this hearing. She said that the landlord owns the rental unit and confirmed the rental unit address. She provided her email address for me to send this decision to the landlord after the hearing.

Rule 6.11 of the Residential Tenancy Branch *Rules of Procedure* does not permit recording of this hearing by any party. At the outset of this hearing, the landlord's agent affirmed, under oath, that she would not record this hearing.

I explained the hearing process to the landlord's agent. She had an opportunity to ask questions. She affirmed that she was ready to proceed with this hearing. She did not make any adjournment or accommodation requests.

The landlord's agent stated that the tenant was served with the landlord's application for dispute resolution hearing package on March 15, 2022, by way of registered mail to the rental unit, where the tenant is still residing. The landlord provided a Canada Post receipt and the landlord's agent confirmed the tracking number verbally during this hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on March 20, 2022, five days after its registered mailing.

Preliminary Issue – Amendment of Landlord's Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to increase the landlord's monetary claim to include May and June 2022 unpaid rent, totalling \$1,732.50. The landlord's agent requested this amendment during this hearing.

The landlord filed this application on March 8, 2022, prior to the May and June 2022 rent being due. I find that the tenant is aware that rent is due as per her tenancy agreement. The tenant continues to reside in the rental unit, despite the fact that a mutual agreement to end tenancy required her to vacate earlier. Therefore, the tenant knew or should have known that by failing to pay her full rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claim for increased rent, despite the fact that she did not attend this hearing.

During this hearing, the landlord's agent confirmed that the landlord only wanted to retain the tenant's security deposit of \$500.00, in full satisfaction of the landlord's total unpaid rent claim of \$1,732.50, and the landlord did not want to pursue its remaining claim for unpaid rent of \$1,232.50 against the tenant at any time now or in the future. She confirmed that the landlord did not want to pursue its claim for the \$100.00 application filing fee against the tenant at any time now or in the future.

I informed the landlord's agent that the landlord's claims for unpaid rent of \$1,232.50 and to recover the \$100.00 filing fee were both dismissed without leave to reapply. She confirmed her understanding of same.

Issues to be Decided

Is the landlord entitled to an Order of Possession based on a mutual agreement to end tenancy?

Is the landlord entitled to retain the tenant's security deposit in full satisfaction of the total unpaid rent?

Background and Evidence

The landlord's agent testified regarding the following facts. This tenancy began on October 15, 2019. Both parties signed a written tenancy agreement. Monthly rent was originally \$1,000.00. The rent was changed pursuant to a Notice of Rent Increase, dated November 15, 2021 ("NRI"), effective on March 1, 2022, from \$1,000.00 to \$1,015.00, payable on the first day of each month. The tenant was served with the NRI on November 17, 2021. The tenant paid a security deposit of \$500.00, and the landlord continues to retain this deposit in full. The tenant continues to reside in the rental unit, as the landlord conducted an inspection on the day before this hearing and saw the tenant living there.

The landlord's agent stated the following facts. The landlord's agent and the tenant both signed a mutual agreement to end tenancy for the tenant to vacate the rental unit by 1:00 p.m. on February 28, 2022 ("mutual agreement"). The landlord's agent witnessed the tenant sign the mutual agreement, as the landlord's agent was present and signed it herself at the same time. There is a new tenant that is supposed to move into the rental unit, who is currently living in a different unit, and still waiting to get into the rental unit. The tenant's rental unit is a handicapped unit. The landlord seeks an immediate order of possession against the tenant, based on the mutual agreement.

The landlord's agent testified regarding the following facts. The landlord's rent invoice shows the current rent of \$1,015.00 per month. The landlord originally applied for unpaid rent of \$637.50 for March 2022 but the tenant paid this amount to the landlord. The tenant failed to pay rent of \$717.50 for May 2022 and \$1,015.00 for June 2022, totalling \$1,732.50. The landlord seeks to retain the tenant's security deposit of \$500.00 in full satisfaction of the total unpaid rent of \$1,732.50.

Analysis

On a balance of probabilities and for the reasons stated below, I make the following findings based on the undisputed, affirmed testimony of the landlord's agent at this hearing and the undisputed documentary evidence of the landlord submitted for this hearing. The tenant did not attend this hearing to provide affirmed testimony. The tenant did not provide any documentary evidence for this hearing.

Order of Possession

Section 44(1)(c) of the *Act* states the following with respect to ending a tenancy:

*44 (1) A tenancy ends only if one or more of the following applies:
(c) the landlord and tenant agree in writing to end the tenancy.*

The landlord provided undisputed affirmed testimony and documentary evidence that both parties signed a mutual agreement to end this tenancy at 1:00 p.m. on February 28, 2022. A copy of the mutual agreement was provided for this hearing. It is on an approved RTB form. It is signed by both parties, the landlord's agent, as the authorized representative of the landlord owner, and the tenant. It states that the tenancy is ending at 1:00 p.m. on February 28, 2022. The tenant was required to vacate by the above date and time but failed to do so.

I find that the tenant voluntarily signed the mutual agreement, and it is valid and effective. The tenant could have called the RTB, using the contact information provided on the mutual agreement, to ask questions or to determine her rights and responsibilities, as specifically stated on the form itself. I accept the testimony of the landlord's agent that she witnessed the tenant signed the mutual agreement, since the landlord's agent signed it at the same time.

At the top of the form, the parties' mutual agreement clearly states that it is an agreement by both parties to end the tenancy. It specifically states that neither party is under any obligation to sign the form and that if any party has questions, to contact the RTB, before signing the form. The contact information for the RTB is on the bottom of the form. It states that the agreement is in accordance with the *Act*, which says that both the landlord and tenant agree in writing to end the tenancy.

The parties' mutual agreement states the following at the top of the form in large black font (my emphasis added):

Mutual Agreement to End a Tenancy
#RTB-8

*NOTE: This form is NOT a Notice to End Tenancy. **Neither a Landlord nor a Tenant is under any obligation to sign this form. By signing this form, both parties understand and agree the tenancy will end with no further obligation between landlord(s) or tenant(s).** If you are the tenant, this may include foregoing any compensation you may be due if you were served a Notice to End Tenancy. **If you have questions about tenant or landlord rights and responsibilities** under the Residential Tenancy Act or the Manufactured Home Part Tenancy Act, **contact the Residential Tenancy Branch using the information provided at the bottom of this form before you sign.***

The mutual agreement states the following at the bottom of the form under the landlord's and tenant's signature lines (my emphasis added):

The parties recognize that the tenancy agreement between them will legally terminate and come to and end at the date and time stated above. It is also understood and agreed that this agreement is in accordance with the Residential Tenancy Act and the Manufactured Home Park Tenancy Act which states: "The landlord and tenant agree in writing to end the tenancy."

FOR MORE INFORMATION:

www.gov.bc.ca/landlordtenant

Phone: 1-800-665-8779 (toll-free) Greater Vancouver: 604-660-1020 Victoria: 250-387-1602

I find that the landlord's collection of rent from the tenant after the effective date of the mutual agreement of February 28, 2022, does not waive the landlord's right to enforce the mutual agreement against the tenant. I find that the landlord is entitled to collect rent from the tenant for this tenancy, as per both parties' written tenancy agreement, since the tenant is still residing in the rental unit.

On a balance of probabilities and for the reasons stated above, I find that the landlord is entitled to an order of possession against the tenant, effective two (2) days after service

on the tenant, pursuant to section 55 of the *Act*. I find that the tenant did not vacate the rental unit as required by the mutual agreement.

The February 28, 2022 effective date in the mutual agreement has long passed, as this hearing occurred on June 21, 2022, almost four months later. Accordingly, I find that the landlord is entitled to an immediate order of possession, which the landlord's agent requested during this hearing.

Monetary Order

As per section 26 of the *Act*, the tenant is required to pay rent on the first day of each month, as per the landlord's agent's testimony. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I accept the undisputed affirmed testimony of the landlord's agent at this hearing, that the tenant was served with a valid, legal NRI and the rent was legally changed from \$1,000.00 to \$1,015.00 per month, effective March 1, 2022. I find that the above amount is in accordance with the RTB *Regulation* amount for the year 2022, of 1.5%.

I accept the undisputed affirmed testimony of the landlord's agent at this hearing, that the tenant failed to pay rent of \$717.50 for May 2022 and \$1,015.00 for June 2022, totalling \$1,732.50.

The landlord continues to hold the tenant's security deposit of \$500.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's entire security deposit of \$500.00, in full satisfaction of the unpaid rent of \$1,732.50. No interest is payable on the security deposit over the period of this tenancy.

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days** after service on the tenant. Should the tenant or anyone 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.

I order the landlord to retain the tenant's entire security deposit of \$500.00 in full satisfaction of the unpaid rent of \$1,732.50.

The landlord's application for unpaid rent of \$1,232.50 and to recover the \$100.00 filing fee, is dismissed without leave to reapply.

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: June 21, 2022

Residential Tenancy Branch