



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPT**

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (“Application”) filed by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) to seek an Order of Possession pursuant to section 54 of the Act.

A representative for the Landlord did not attend the hearing scheduled for 11:00 am. I left the teleconference hearing connection open for the entire hearing, which ended at 11:28 am, in order to enable a representative of the Landlord to call into this teleconference hearing. One of the Tenants (“AM”) 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 Dispute Resolution Proceeding (“NDRP”). I also confirmed from the teleconference system that AM and I were the only ones who had called into this teleconference.

AM testified she served the NDRP and the Tenants’ evidence (“NDRP Package”) on an agent of the Landlord in-person on July 30, 2022. Based on the undisputed testimony of AM, I find the NDRP Package was served on the Landlord in accordance with the provisions of sections 88 and 89 of the Act.

AM stated she did not receive any evidence from the Landlord.

Issue to be Decided

Are the Tenants entitled to an Order of Possession?

Preliminary Matter – Effect of Non-Attendance by Landlord

Rules 7.1 and 7.3 of the Rules state:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of the party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Notwithstanding a representative of the Landlord did not attend the hearing, pursuant to Rule 7.3, I proceeded with the hearing.

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

AM submitted into evidence a copy of the executed tenancy agreement between the Landlord and Tenants. AM stated the tenancy commenced on April 15, 2022, with a fixed term ending April 30, 2023, with rent of \$1,000.00 payable on the 1st day of each month. The Tenants were to pay a security deposit of \$250.00 by June 15, 2022. AM stated the Tenants paid the deposit to the Landlord. AM stated the Tenants have paid all of the rent required by the tenancy agreement.

AM stated that, on July 28, 2022, eight men came to the rental unit, some with baseball bats, who told her that the Tenants were required to vacate the rental unit as the Landlord was tearing it down. AM stated she removed some of the Tenants' possessions that evening. AM stated that, on July 29, 2022, while she was at work, employees of the Landlord came and remove most of the Tenants' personal possessions outside of the rental unit. AM stated many of the personal possessions were destroyed. AM stated she called the RCMP who told her to obtain an Order of Possession against the Landlord from the Residential Tenancy Branch. AM stated she was told by the RCMP that, when she obtains the Order of Possession, to call them and they will assist her to return to the rental unit. AM stated that, since moving into the rental unit, she spent considerable time to cleaning it and removing garbage from the exterior grounds of the rental unit that were left by the previous tenants.

AM stated the Tenants were never served with any type of notice to end tenancy by the Landlord. AM stated the Tenants have not served the Landlord with a notice to end tenancy nor have they signed a mutual agreement with the Landlord to end the tenancy prior to the end of the fixed term ending April 30, 2022. AM stated the Tenants are not aware of the Landlord being granted an Order of Possession or Writ of Possession requiring the Tenants to vacate the rental unit. AM stated the rental unit has not been demolished at this point in time.

Analysis

On the basis of the undisputed testimony of AM, I find there is a tenancy between the Landlord and Tenants that commenced on April 15, 2022 for a fixed term ending April 30, 2023. I find the undisputed testimony of AM was an agent of the Landlord told her to vacate the rental unit on July 28, 2022. AM stated that, on July 29, 2022, employees of the Landlord removed most of the Tenants' personal possessions from the rental unit. AM stated the Tenants have not given a notice to the Landlord to end the tenancy nor have the Tenants entered into a mutual agreement with the Landlord to end the tenancy prior to the end of the fixed term of the least ending April 30, 2022. AM Tenant requested an Order of Possession of the rental unit.

Section 54(1) of the Act states:

- 54(1) A tenant who has entered into a tenancy agreement with a landlord may request an order of possession of the rental unit by making an application for dispute resolution.

- (2) The director may grant an order of possession to a tenant under this section before or after the date on which the tenant is entitled to occupy the rental unit under the tenancy agreement, and the order is effective on the date specified by the director.
- (3) The date specified under subsection (2) may not be earlier than the date the tenant is entitled to occupy the rental unit.

I find the Tenants are entitled to an Order of Possession pursuant to section 54(1) of the Act. As such, I order the Landlord to deliver possession of the rental unit to the Tenants effective immediately after service of the Order of Possession on the Landlord by the Tenants.

Conclusion

The Landlord is ordered to give the Tenants possession of the rental unit effective immediately after service of the Order of Possession on the Landlord by the Tenants.

Should the Landlord fail to comply with this Order of Possession, 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: August 8, 2022

Residential Tenancy Branch