



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, OPB, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on July 31, 2022. The Landlord applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- a monetary order for unpaid rent;
- an order permitting the Landlord to retain all or part of the security deposit and/or pet damage deposit;
- an order of possession based on the end of a fixed-term tenancy agreement; and
- an order granting recovery of the filing fee.

The Landlord and the Tenant attended the hearing and provided affirmed testimony.

The Landlord testified that the Notice of Dispute Resolution Proceeding package was served on the Tenant by registered mail. The Tenant acknowledged receipt. The Tenant testified the documentary evidence in response to the application was served on the Landlord in person. The Landlord acknowledged receipt.

No issues were raised with respect to service and receipt of the above documents during the hearing. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were provided with a full 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue

At the beginning of the hearing, the Landlord confirmed that all payments are up to date but have been accepted for use and occupancy only. Therefore, I dismiss the Landlord's request for a monetary order for unpaid rent.

Issues to be Decided

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to retain all or part of the security deposit?
3. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The parties agreed that a fixed term tenancy began on January 1, 2022 and was expected to end on June 30, 2022. Rent of \$950.00 was due each month. The tenancy agreement contained a vacate clause, initialled by the parties, which indicated the Tenant was to move out of the rental unit on June 30, 2022. The parties agreed the Tenant paid a security deposit of \$475.00 and did not pay a pet damage deposit.

The parties agreed that the Tenant requested an extension of the original fixed term agreement. The Landlord testified that she felt bad for the Tenant and agreed to enter into a new fixed term agreement for the period from July 1-31, 2022. Again, the new fixed term agreement contained a vacate clause, initialled by the parties, which indicated the Tenant was to move out of the rental unit on July 31, 2022. This requirement was repeated in a hand-written and signed addendum. Rent of \$1,050.00 was due for the term. Copies of the signed tenancy agreements and the addendum were submitted into evidence.

The Landlord seeks an order of possession. The Landlord testified that she entered into a new fixed term agreement that was to end on July 31, 2022, pursuant to the new signed tenancy agreement and addendum. The Landlord confirmed that she wants the rental unit for her own use.

In reply, the Tenant agreed with the terms of the agreements described above. However, he testified that he was coerced into signing the new fixed term agreement because a person attended the rental unit with the Landlord to take measurements and witness him sign it. The Tenant also stated that he felt like he was being “tricked”. The Tenant testified he felt harassed and has been accused of terrorism, which the Landlord denied. These slights have caused him “mental suffering”. He feels like it would not be an issue if he were paying more rent. The Tenant testified that he feels entitled to receive a notice to end tenancy for landlord’s use of property under section 49 of the Act.

Finally, the Landlord seeks to recover the \$100.00 filing fee paid to make the application.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Policy Guideline #30 confirms that a vacate clause can be included in a fixed term tenancy agreement if the landlord or a close family member of the landlord intends to occupy the rental unit at the end of the term. The reason for including the vacate clause must be indicated on the tenancy agreement and the term must be initialled both parties. If these criteria are met, the tenant must move out at the end of the fixed term.

In this case, I find the parties agreed they entered into a new fixed term agreement for the period from July 1-31, 2022. The new agreement included a vacate clause on the basis that the Landlord intended to use the rental unit. The term was initialled by both parties and was supported by an addendum.

I do not accept the Tenant’s suggestion that he was tricked or coerced into signing the new agreement. Indeed, it was the Tenant who requested the extension, and it remained open to the Landlord to reject the Tenant’s request and to have the tenancy

end on June 30, 2022. Further, I do not accept that the presence of a witness to the new agreement amounts to coercion. I also find that the Tenant's assertion that he believed he entered into a month-to-month tenancy, or that the new fixed term agreement automatically converted to a month-to-month tenancy at the end of the fixed term, is not supported in the documentary evidence submitted.

Considering the above, I find the fixed term tenancy ended on July 31, 2022 and that the Tenant is overholding. I find that the Landlord is entitled to an order of possession, which will be effective two days after it is served on the Tenant.

Having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee. I order that \$100.00 may be deducted from the security deposit held, reducing the amount of the security deposit to \$375.00. The balance must be dealt with in accordance with section 38 of the Act

Conclusion

The Landlord is granted an order of possession, which will be effective two days after it is served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted recovery of the \$100.00 filing fee, which may be deducted from the security deposit held.

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: September 29, 2022

Residential Tenancy Branch