



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held on December 23, 2022. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a mutual agreement to end tenancy

The Landlord was present at the hearing. S.C., M.E., and T.B. were present at the hearing for the Tenants. T.B. confirmed that he has moved out of the rental unit. S.C. and M.E. confirmed receipt of the Landlord's Notice of Dispute Resolution Proceeding and evidence package. I find S.C. and M.E. were sufficiently served with the Notice of Dispute Resolution Proceeding and evidence package. T.B. stated he was never served with the Notice of Dispute Resolution Proceeding but was willing to proceed with the hearing, and he stated he would raise any issues in the hearing, if there were any. He did not raise any further issues with service.

T.B. also confirmed that M.B. moved out at the same time he did, in July 2022. The Landlord confirmed that they only served S.C. and M.E. with the Notice of Dispute Resolution Proceeding and evidence because they were the only remaining tenants from the original tenancy agreement that were still living in the unit. I find the Landlord sufficiently served their Notice of Dispute Resolution Proceeding and evidence package to the only remaining Tenant's in the rental unit, S.C., M.E.

S.C. and M.E. stated that they sent their evidence package by registered mail to the Landlord and the Landlord acknowledged receipt of this package, which also contained a USB stick. I note that S.C. and M.E. followed up with the Landlord, via email, to confirm that the Landlord was able to gain access to the digital evidence. However, the

Landlord did not reply. I find the Tenants complied with the Rules regarding confirming access to digital files, and I find this evidence was sufficiently served.

All parties were provided the 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to an order of possession based on a mutual agreement to end tenancy?

Background and Evidence

The Landlord testified that there are 4 Tenants under this tenancy agreement, and two of them signed a Mutual Agreement to End a Tenancy (the mutual agreement). The Landlord provided copies of this mutual agreement, and it shows that M.B. and T.B. each signed a separate mutual agreement, with an effective date of July 31, 2022.

The Landlord stated that the people who signed the mutual agreement moved out as agreed, but the other two tenants, S.C. and M.E., stayed in the rental unit and continued paying rent. After the end of July, the Landlord provided copies of rent receipts for which he indicated the payments were for “use and occupancy” only. The Landlord applied for an Order of Possession on August 2, 2022, because S.C. and M.E. did not move out.

The remaining Tenants, S.C. and M.E., assert that a new tenancy has been established, as of August 1, 2022, since they remained in the rental unit and continued paying rent. S.C. and M.E. stated that if M.B. and T.B. (the two tenants who moved out), are equally responsible for ending the tenancy, then they are equally responsible for continuing the tenancy. S.C. and M.E. point to the fact that they had a fixed term lease agreement until May 2024.

S.C. and M.E. assert that the Landlord offered to “honour the contract” verbally on July 13, 2022. S.C. and M.E. provided a copy of this phone call recording. This recording is around 11 minutes long, and contains several back and forth conversations about whether or not the tenancy was to end. S.C. and M.E. assert that the Landlord offered them to stay and start a new tenancy, even after the other two tenants had moved out.

However, the Landlord pointed out that he clearly said in that conversation that he wanted the tenancy to end, and there was never any agreement to start a new tenancy. The Landlord stated that they were okay with allowing the Tenants, S.C. and M.E., an extra month to find another place, but they assert that all their calls, and texts, are consistent in that they had no intention of letting S.C. and M.E. stay indefinitely.

S.C. and M.E. pointed to text messages from the Landlord, provided into evidence, and they assert he was giving them an option to stay. This text message thread shows that the Landlord, on July 15, 2022, asked S.C., "what's the verdict", followed by an offer by S.C. to continue the tenancy month-to-month. Following this, and after some time, the Landlord left a voicemail, and sent a text message saying "I don't know why you guys are not picking up my phone. But know this, you guys need to move out of my house by the end of July. Everything is done legally."

Analysis

Section 44 of the Act allows for a tenancy to end by mutual agreement of the parties to the tenancy as long as the agreement is in writing.

I note there were 4 Tenants on the tenancy agreement provided into evidence. It appears there was some dysfunction that occurred and the Landlord met with two of the 4 tenants to sign a mutual agreement to end tenancy. This happened on July 5, 2022, and both M.B. and T.B. signed their respective mutual agreement to end tenancy documents. The Landlord also signed this document. I note this mutual agreement had an effective date of July 31, 2022. M.B. and T.B. moved out as per their agreements. However, S.C. and M.E. remained living in the unit.

I have reviewed the testimony and evidence on this matter. After the mutual agreement was signed on July 5, 2022, I do not find there was a clear meeting of the minds and agreement in any of the text messages or phone calls between the Landlord and the Tenants such that I could be satisfied the parties entered into a new tenancy agreement, or that both parties intended to do so. I note the Landlord said several times in text message, and verbally, that he wanted to end the tenancy. I also note the Landlord issued rent receipts for "use and occupancy" only, following the effective date of the mutual agreement. Further, I note the Landlord applied for an Order of Possession on August 2, 2022, once he realized S.C. and M.E. were not wanting to move out. I find the Landlord's actions are sufficiently consistent and clear, and support that he wished to end the tenancy, not continue it indefinitely. I do not find the tenancy has been reinstated, following the mutual agreement effective date.

I find the tenancy ended on July 31, 2022, as laid out in the mutual agreement, and time spent in the rental unit after that point was for use and occupancy only. It is important to note that any of the 4 Tenants were lawfully entitled to enter into a mutual agreement to end the tenancy, which ends the tenancy for all parties to that contract. As stated above, I do not find a new tenancy has been created, given the totality of the situation.

I find the Landlord is entitled to an order of possession based on the mutual agreement to end tenancy. This order of possession will be effective December 31, 2022, at 1pm, after it is served on the Tenants.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the landlord was substantially successful in this hearing, I order the tenants to repay the \$100. Pursuant to sections 72 of the *Act*, I authorize the landlord to retain \$100.00 from the security deposit in order to compensate him for the cost of filing this application.

Conclusion

The Landlord is granted an order of possession effective **December 31, 2022**, at 1:00 p.m. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be 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: December 23, 2022

Residential Tenancy Branch