



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM MNDCL-S FFL

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to obtain an order of possession based on a signed Mutual Agreement to End Tenancy (Mutual Agreement) for a monetary claim of \$1,750 plus the recovery of the \$100 filing fee.

The landlord and the spouse of the landlord, PW (spouse) attended the teleconference hearing and gave affirmed testimony. During the hearing the landlord and their spouse were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding document dated August 18, 2022 (Notice of Hearing), application and documentary evidence (Hearing Package) were considered. The landlord testified that the Hearing Package was served on the tenant by registered mail. The Canada Post registered mail tracking number was submitted in evidence and has been included on the cover page of this decision for ease of reference. According to the Canada Post online registered mail tracking website, the Hearing Package was mailed to the tenant at the rental unit address on August 18, 2022 as the tenant continues to reside in the rental unit as of the date of the hearing and was marked as "unclaimed" and was returned to the landlord sender. Pursuant to section 90 of the Act, documents sent by registered mail are deemed served 5 days after they are mailed. Therefore, I find the tenant was deemed served as of August 23, 2022.

Residential Tenancy Branch (RTB) Rule 7.3 of the Rules of Procedure (Rules) applies and states the following:

Rule 7.3 Consequences of not attending the hearing

The arbitrator may conduct the hearing in the absence of a party or dismiss the application, with or without leave to re-apply.

Based on the above, I find this matter to be unopposed by the tenant and the hearing continued without the tenant present.

Preliminary and Procedural Matters

The landlord confirmed the email address of both parties at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to the landlord. The tenant will be sent the decision via email.

Regarding the monetary claim of \$1,750, the landlord was advised at the outset of the hearing that insufficient details were provided for the monetary claim and as such, I would only be addressing the order of possession and the filing fee in this decision. The monetary claim is dismissed with leave to reapply as a result of insufficient details.

Issues to be Decided

- Is the landlord entitled to an order of possession based on the signed Mutual Agreement?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on February 1, 2021 and converted to a month-to-month tenancy after January 31, 2022. Monthly rent was \$1,600 per month and due on the first day of each month. The tenant paid a security deposit of \$800, which the landlord continues to hold.

The landlord presented the signed Mutual Agreement in evidence which supports that both the landlord and the tenant signed the Mutual Agreement to End the Tenancy on July 7, 2022, with an effective vacancy date of July 31, 2022 at 6:00 p.m. The landlord testified that the tenant has refused to vacate the rental unit and instead is insisting on a 2 Month Notice to End Tenancy, which the landlord stated they are not required to serve the tenant as the tenant signed the Mutual Agreement.

The landlord also stated that the tenant has threatened that they will damage the rental unit if they landlord does not pay them compensation to vacate the rental unit. The landlord confirmed that the tenant has been paying for use and occupancy of the rental unit since they have been overholding the rental unit.

Analysis

Based on the undisputed documentary evidence of the landlord and undisputed testimony provided by the landlord during the hearing, and on the balance of probabilities, I find the following.

Order of possession – Section 44(1)(c) of the Act states that a tenancy ends if the landlord and tenant agree in writing to end the tenancy. Therefore, pursuant to section 44(1)(c) of the Act, I find the tenancy ended on July 31, 2022 at 6:00 p.m. based on the Mutual Agreement signed by the parties before me. In addition, as the tenant failed to vacate the rental unit on that date, and continues to occupy the rental unit, I grant the landlord an order of possession effective **December 31, 2022 at 1:00 p.m.**

As the landlord's application was successful and pursuant to section 72 of the Act, I grant the landlord **\$100** for the recovery of the cost of the filing fee under the Act. Given the above, I authorize the landlord pursuant to section 67 and 72 of the Act to retain \$100 from the tenant's security deposit of \$800 in full satisfaction of the recovery of the cost of the filing fee. I find that the tenant's new security deposit balance is \$700 effective immediately, pursuant to sections 62(3) and 67 of the Act.

Conclusion

The landlord's application is fully successful.

The tenancy ended on July 31, 2022 at 6:00 p.m. based on the signed Mutual Agreement before me. The tenant has been overholding the rental unit since that date.

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 and may be enforced in the Supreme Court of British Columbia. The tenant is cautioned that they are not entitled to compensation as they signed the Mutual Agreement and that the tenant can be held liable for all costs related to enforcing the order of possession including but not limited to court costs and bailiff fees.

The landlord has been authorized pursuant to section 67 and 72 of the Act, to retain \$100 from the tenant's security deposit of \$800 in full satisfaction of the recovery of the cost of the filing fee. The tenant's new security deposit balance is \$700 effective immediately, pursuant to sections 62(3) and 67 of the Act.

The decision and order of possession will be emailed to the landlord for service on the tenant. The decision will be sent by regular mail to the tenant.

Should the tenant fail to comply with my order, the tenant can be held liable for all costs related to enforcing the order of possession including but not limited to court costs and bailiff fees.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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