



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN FFL

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for an order of possession based on the tenants' notice to end tenancy, for damages in the amount of \$367.50 and to recover the cost of the \$100 filing fee.

Tenant SZ (tenant) and an agent for the landlord, JY (agent) attended the teleconference hearing and gave affirmed testimony. During the hearing the parties 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.

The tenant confirmed that they were served with the application and documentary evidence from the landlord and had the opportunity to review that evidence prior to the hearing. The landlord confirmed that they were served with the documentary evidence from the tenant and that they have the opportunity to review that evidence prior to the hearing. Given the above, I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matters

Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the landlord has indicated several matters of dispute on the application, the most urgent of which is the application for an order of possession. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the landlord's request for and order of possession and the filing fee at this proceeding. The landlord's claim for damages is **dismissed with leave to reapply**.

In addition, the parties confirmed their email addresses during the hearing and were advised that the decision would be emailed to the parties.

Issues to be Decided

- Is the landlord entitled to an order of possession based on the tenants' notice to end the tenancy?
- If yes, 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 May 1, 2021 and converted to a month-to-month tenancy after February 28, 2022.

The landlord submitted an email that the tenant confirmed sending to the landlord dated August 19, 2022 at 4:50PM, which reads in part as follows:



The tenant was asked why they did not vacate the rental unit based on the above notice to end the tenancy, to which the tenant stated that the tenant and the landlord verbally agreed on August 20, 2022 that the notice was not valid and that the tenancy could continue. The landlord vehemently disputed that they agreed with the tenant to continue the tenancy.

The tenant submitted in evidence a copy of a Notice of Rent Increase form dated September 20, 2022 (Notice of Rent Increase), which indicates a rent increase of \$40 to be added to the \$2,000 monthly rent effective January 1, 2023. The tenant claims that the landlord wanted to continue the tenancy by issuing the tenants the Notice of Rent Increase. The landlord testified that because they caught the tenants renting out the rental unit as an AirBnB without permission and that the landlord thought the tenants would not vacate the rental unit as promised. The landlord stated that they only issued the Notice of Rent Increase “just in case” the tenants refused to vacate, which is what

happened as the tenants continue to occupy the rental unit and did not vacate in accordance with their one-month notice to end tenancy served on the landlord dated August 18, 2022.

The tenant claims that the landlord has not issued a receipt for “use and occupancy” and as a result, the tenant was asked how they paid their monthly rent. The tenant confirmed that the monthly rent is paid by automatic bank withdrawal. As a result, rent is not paid in cash by the tenants to the landlord, which I will address later in this decision.

Analysis

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

Firstly, I will address the notice to end tenancy by the tenants. Section 44(1) of the Act applies and states the ways a tenancy can end as follows:

How a tenancy ends

44(1) A tenancy ends only if one or more of the following applies:

(a) **the tenant or landlord gives notice to end the tenancy in accordance with one of the following:**

(i) **section 45 [tenant's notice];**

(i.1) *section 45.1 [tenant's notice: family violence or long-term care];*

(ii) *section 46 [landlord's notice: non-payment of rent];*

(iii) *section 47 [landlord's notice: cause];*

(iv) *section 48 [landlord's notice: end of employment];*

(v) *section 49 [landlord's notice: landlord's use of property];*

(vi) *section 49.1 [landlord's notice: tenant ceases to qualify];*

(vii) *section 50 [tenant may end tenancy early];*

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

- (f) the director orders that the tenancy is ended;
- (g) the tenancy agreement is a sublease agreement.
[emphasis added]

Section 52 of the Act, also applies and states the following:

Form and content of notice to end tenancy

52 In order to be effective, **a notice to end a tenancy must be in writing and must**

- (a) **be signed and dated** by the landlord **or tenant giving the notice**,
- (b) **give the address of the rental unit**,
- (c) **state the effective date of the notice**,
- (d) **except for a notice under section 45 (1) or (2) [tenant's notice]**, state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.
[emphasis added]

The definition of “writing” according to *Black’s Law Dictionary, 2nd Ed.* states as follows:

“The expression of ideas by letters visible to the eye.”

[reproduced as written]

I find the tenants’ notice to end tenancy complies with section 52 of the Act as it is an email, which I find is signed once the tenant sent the email to the landlord on August 18, 2022 at 4:40PM, is in writing, includes the rental unit address and includes the effective date of the notice, which is listed as September 30, 2022.

In addition, I find the landlord had the right to rely on that notice from the tenants and that the tenancy would end on September 30, 2022 as a result.

I will now address the Notice of Rent Increase, I disagree with the tenant that the Notice of Rent Increase supports that the landlord wanted to continue the tenancy. I have reached this finding based on the landlord testifying that the Notice of Rent Increase was issued “just in case” the tenants did not vacate the rental unit, which is exactly what the tenants did, they refused to vacate the rental unit and remain in the rental unit at the

time of the hearing. Furthermore, I find the landlord's rationale to be reasonable given that the landlord stated that the tenants rented out the rental unit as an AirBnB without permission during the tenancy.

Finally, I will address receipts for "use and occupancy". The Act does not require receipts to be issued unless the payment for rent is made in cash, which is not the case before me as the rent has been paid via monthly automatic withdrawal. I also find that it is completely reasonable to keep accepting money from the tenants who refuse to vacate the rental unit as per their notice to end tenancy. I find the landlord has not reinstated the tenancy at any time since the tenants served their written notice to end tenancy.

Order of possession - I find that pursuant to section 44(1)(a)(i) of the Act that the tenants served their written notice on the landlord ending the tenancy as of September 30, 2022. I find the landlord has the right to rely on that notice. Section 55(2)(a) of the Act applies and states:

Order of possession for the landlord

55(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(a) a notice to end the tenancy has been given by the tenant;

[emphasis added]

Given the above, and while taking into account that money for rent/money for use and occupancy for February 2023 is due in just a few days, I grant the landlord an order of possession effective **February 28, 2023 at 1:00 p.m.** I have not used two (2) days for an effective date as there is no history before me of unpaid rent or late payments of rent.

As the landlord has succeeded with their application, I grant the landlord the recovery of the filing fee in the amount of **\$100** pursuant to section 72 of the Act. Pursuant to section 67 of the Act, I grant the landlord a monetary order in the amount of **\$100**, for the filing fee.

Conclusion

The landlord's application is fully successful.

The tenancy ended on September 30, 2022. The landlord has been granted an order of possession effective February 28, 2023 at 1:00 p.m. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The landlord is granted a monetary order in the amount of \$100. Should the landlord require enforcement of the monetary order, the landlord must serve the monetary order with a demand for payment letter, and then may enforce the monetary in the Provincial Court, Small Claims Division.

The tenants are cautioned that they can be held liable for all costs related to enforcement of both the order of possession, including but not limited to court costs and bailiff fees and the monetary order, including court costs.

This decision will be emailed to the parties.

The order of possession will be emailed to the landlord only for service on the tenants.

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: January 27, 2023

Residential Tenancy Branch