



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, FFL, OPC, MNDCL

Introduction

This hearing was convened by way of conference call. The Landlord filed an Application for Dispute Resolution on January 29, 2021 (the “Application”). The Landlord applied as follows:

- For an Order of Possession based on a mutual agreement to end the tenancy
- For reimbursement for the filing fee

The Landlord filed two amendments February 05, 2021, one changing his address and the second seeking an Order of Possession based on a One Month Notice. The Landlord filed a third amendment April 01, 2021 seeking monetary compensation.

The Landlord appeared at the hearing. The Tenants did not appear at the hearing. I explained the hearing process to the Landlord who did not have questions when asked. I told the Landlord he was not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlord provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenants did not submit evidence. I addressed service of the hearing package, amendments and Landlord's evidence.

The Landlord testified as follows. The hearing package, first amendment and evidence were sent to the rental unit by registered mail. Tracking Numbers 1 and 2 in evidence relate to this. I looked Tracking Numbers 1 and 2 up on the Canada Post website which shows the packages were sent February 05, 2021 and delivered February 08, 2021.

The Landlord testified that the third amendment was put through the mail slot at the rental unit on April 01, 2021 in a package addressed to both Tenants.

I have not considered the request for an Order of Possession based on a One Month Notice and therefore do not find it necessary to consider service of the amendment in relation to this.

Based on the undisputed testimony of the Landlord, the documentary evidence submitted and the Canada Post website information, I am satisfied the Tenants were served with the hearing package, first amendment and evidence in accordance with sections 88(c) and 89(2)(b) of the *Residential Tenancy Act* (the “*Act*”). Based on the Canada Post website information, I am satisfied the Tenants received the packages February 08, 2021. I am also satisfied the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

In relation to the third amendment, it had to be served in accordance with section 89(1) of the *Act* which states:

89 (1) An application for dispute resolution...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
- (f) by any other means of service provided for in the regulations.

The third amendment was not served in accordance with section 89(1) of the *Act* as required and therefore I am not allowing the Application to be amended as requested in the third amendment. The Landlord is at liberty to re-apply for the compensation sought in the third amendment.

As I was satisfied of service of the hearing package, first amendment and evidence, I proceeded with the hearing in the absence of the Tenants. The Landlord was given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the Landlord. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on a mutual agreement?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord submitted a written rental application which sets out agreed upon terms. The Landlord confirmed that the terms in the rental application are the terms of the tenancy agreement between the parties and confirmed the following. The tenancy started November 06, 2019 and was for a fixed term ending April 30, 2020. Rent is \$2,000.00 per month due on the first day of each month. The Tenants paid a \$1,000.00 security deposit. All parties signed the rental application.

The Landlord testified that there was a further written tenancy agreement between the parties extending the tenancy to August 31, 2020.

The Landlord submitted a Mutual Agreement to End a Tenancy form signed by the parties ending the tenancy for March 31, 2021 (the "Mutual Agreement"). The Landlord confirmed all parties signed the form.

Analysis

Section 44(1)(c) of the *Act* states that a tenancy ends if "the landlord and tenant agree in writing to end the tenancy".

Pursuant to section 55(2)(d) of the *Act*, a landlord can apply for an order of possession of a rental unit if "the landlord and tenant have agreed in writing that the tenancy is ended".

I am satisfied based on the Mutual Agreement and testimony of the Landlord that the parties signed the Mutual Agreement ending the tenancy on March 31, 2021. The

Tenants were bound by this agreement and were required to vacate the rental unit by March 31, 2021.

Pursuant to section 44(1)(c) of the *Act*, the tenancy ended March 31, 2021.

The Landlord is entitled to an Order of Possession pursuant to section 55(2)(d) of the *Act* and is issued an Order of Possession effective two days after service on the Tenants.

Given the Landlord was successful in the Application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act* and the Landlord is issued a Monetary Order in this amount.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenants. This Order must be served on the Tenants. If the Tenants do not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

The Landlord is entitled to reimbursement for the \$100.00 filing fee and is issued a Monetary Order in this amount. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) and 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 *Act*.

Dated: April 26, 2021

Residential Tenancy Branch