



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lookout emergency aid Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by two agents for the landlord and the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord testified the tenancy began as a month to month tenancy beginning on May 1, 2012 for a monthly subsidized rent of \$375.00 due on the last day of each month with a security deposit of \$250.00 paid.

The landlord provided into evidence a copy of a 1 Month Notice to End Tenancy for Cause issued on September 21, 2014 with an effective vacancy date of November 1, 2014 citing the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; put the landlord's property at significant risk and has caused extraordinary damage to the rental unit or residential property.

The tenant confirmed during the hearing that he had not filed an Application for Dispute Resolution to dispute the 1 Month Notice to End Tenancy. The tenant submitted he was

not aware that he could do that and he inquired if there would have been a cost to do so. I advised the tenant of the potential for a fee waiver.

The landlord also sought to retain the security deposit due to potential damage to the rental unit and for potential cleaning.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has
 - i. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - ii. Put the landlord's property at significant risk; or
- b) The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the rental unit or residential property.

Section 47(4) of the *Act* allows a tenant to dispute a notice to end tenancy under Section 47 within 10 days after the date the tenant receives the notice. Section 47(5) states that if a tenant does not submit an Application for Dispute Resolution seeking to dispute the notice within 10 days the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the notice and must vacate the rental unit by that date.

As the tenant failed to file an Application for Dispute Resolution seeking to cancel this notice I find the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit.

As to the landlord's claim to retain the security deposit I find the tenant has until the end of the tenancy to clean and repair any potential damage to the rental unit. As such, I find the landlord's Application to retain the deposit is premature. I dismiss this portion of the landlord's Application with leave to reapply at a future time.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. 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.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** comprised of the fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$250.00 in satisfaction of this claim leaving a balance of \$200.00 in the security deposit to be disposed of in accordance with the requirements outlined in the *Act*.

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: November 19, 2014

Residential Tenancy Branch

