



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – MT, CNC, OLC

For the landlord – OPC, MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for more time to file an application to cancel a Notice to End Tenancy; to cancel a One Month Notice to End Tenancy for Cause; and for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement. The landlord applied for an Order of Possession for cause; for a Monetary Order for unpaid rent or utilities; for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The landlord withdrew her application for a Monetary Order for damage to the unit, site or property at this time.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant testified that she was unable to serve her digital evidence to the landlord as the landlord has moved and has not provided a forwarding address to the tenant. The parties confirmed receipt of evidence. 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.

Issue(s) to be Decided

- Is the tenant entitled to more time to file an application to cancel a Notice to End Tenancy?
- If so is the tenant entitled to an Order cancelling the One Month Notice to End Tenancy for Cause?
- Is the tenant entitled to an Order for the landlord to comply with the Act?
- Is the landlord entitled to an Order of Possession for cause?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord permitted to keep all or part of the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the *Act*?

Background and Evidence

The parties agreed that this tenancy originally started on May 01, 2014 for two tenants. One of the tenants moved out and a new tenancy agreement was entered into with this tenant on August 01, 2014. Rent for this unit is \$1,200.00 per month due on the 1st of each month. The tenant paid a security deposit of \$600.00 on May 01, 2014.

The landlord testified that the tenant was served with a One Month Notice to End tenancy for Cause (the Notice) on March 23, 2015 by registered mail. The Notice is deemed to have been received by the tenant on March 28, 2015 pursuant to s. 90(a) of the *Act*. The Notice informed the tenant that she had 10 days to file an application to dispute the Notice or the tenancy would end on April 30, 2015. The Notice provided the following reasons to end the tenancy:

- 1) The tenant is repeatedly late paying rent;
- 2) The tenant has allowed an unreasonable number of occupants in the unit;
- 3) The tenant has not done required repairs to the unit, site of property;
- 4) The tenant has assigned or sublet the rental unit without the landlords' written consent

The tenant testified that she filed her application to dispute the One Month Notice late on April 17, 2015 as the tenant was not informed of the correct reason the landlord wanted to end the tenancy. The tenant testified that the landlord said she wanted to live in the rental unit with her foster children and then said she was renting the unit.

The tenant disputed the reasons given on the Notice and seeks an Order to cancel the Notice. The tenant also seeks an Order for the landlord to comply with the *Act*.

The landlord testified that the tenant has failed to move from the rental unit by the effective date of the Notice. The landlord seeks an Order of Possession for the rental unit effective as soon as possible. The landlord provided documentary evidence concerning late payments of rent and information that the tenant has allowed her mother to reside in the rental unit with the tenant.

The landlord testified that the tenant did pay rent for May. As the tenant would not vacate the rental unit, the landlord notified the tenant that payment of this rent did not reinstate the tenancy. The landlord withdraws her application to recover rent for May. The landlord testified that the tenant has continued to live in the rental unit through June and has not paid rent. The landlord seeks to recover the rent for June of \$1,200.00.

The landlord testified that she had a potential tenant who wanted to move into the rental unit. No agreement has been put in place between the landlord and this potential tenant. The potential tenant has gone to stay with a friend and put his belongings elsewhere while they await the outcome of this hearing. The landlord seeks to recover any expenses incurred by the potential tenant of \$300.00 for storage and \$1,000.00 for living expenses.

The landlord seeks to recover \$20.00 for costs incurred in send hearing documents to the tenant by registered mail.

The landlord seeks an Order to keep the security deposit of \$600.00 to offset against the landlord's monetary claim.

The tenant disputed the landlord's claim for rent for June of \$1,200.00. The tenant testified that she should not have to pay this as the landlord was arrested and charged with two counts of assault and mischief after the landlord started to remove the tenant's belongings from the garage on the property before she had an Order of Possession or a Writ of Possession.

The landlord provided her forwarding address to the tenant at the hearing.

Analysis

With regard to the tenant's application for more time to file an application to cancel a Notice to End Tenancy; I refer the parties to s.66 (1) of the *Act* which states:

66 (1) *The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) [starting proceedings] or 81 (4) [decision on application for review].*

The Residential Tenancy Policy Guidelines #36 clarifies the meaning of the words 'exceptional circumstances' and states:

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- The party was in the hospital at all material times.

Page two of the Notice also informed the tenant that she has a right to dispute the Notice within 10 days after she has received the Notice by filing an application for Dispute Resolution. It further informed the tenant that an Arbitrator will only extend the time to file the application if the

Arbitrator accepts the tenant's proof that they had a serious and compelling reason for not filing on time. This section of the Notice goes on to state that if the tenant does not file in time they are presumed to have accepted the Notice and must move out of the rental unit by the date set out on the Notice.

With this in mind I find the tenant has not established an exceptional or compelling reason why she filed her application late. The tenant reason that the landlord changed her mind about what she wanted to use the rental unit for is not exception or compelling to prevent the tenant filing her application within 10 days. Consequently, I must dismiss the tenant's application to cancel the Notice.

I find the Notice remains in force and effect and the tenancy ended on April 30, 2015. I am satisfied that the landlord is entitled to an Order of Possession for the rental unit and this has been issued to the landlord and is effective two days after service upon the tenant.

With regard to the tenant's application for an Order for the landlord to comply with the *Act*, as this tenancy will end, no Orders of this nature will be enforceable as there will no longer be a tenancy in place. I do; however, caution the landlord that she must not attempt to evict the tenant from the property. After the Order of Possession has been served to the tenant; if the tenant then fails to comply with the Order of Possession, the landlord must enforce the Order in the Supreme Court of British Columbia and obtain a Writ of Possession. Bailiffs will then remove the tenant and her belongings from the unit.

With regard to the landlord's claim to recover a loss of rent for June of \$1,200.00; the tenant has continued to reside in the rental unit past the effective date of the Notice. The tenant has paid rent for May which did not reinstate the tenancy. The tenant has continued to over hold at the unit in June. The landlord has testified that she has a tenant waiting for the outcome of this hearing who wants to move into the rental unit as soon as possible. I find therefore I will award the landlord rent for 10 days in June for the tenant overholding as it is June 05 today and the landlord will be collecting an Order of Possession and serving the tenant with that. Potentially the tenant could be vacating the unit on June 10, 2015. If the tenant remains past this date the landlord is entitled to reapply for a further amount of rent for any further days the tenant over

holds in the rental unit. I have calculated the rent at \$40.00 per day and therefore the landlord is entitled to recover \$400.00 from the tenant.

With regard to the landlord's claim to recover losses incurred for her incoming tenant of \$1,300.00. The landlord testified that she has not entered into a tenancy agreement with this potential tenant and has provided no evidence that any losses have been incurred. Without an actual tenancy being in place between the landlord and the incoming tenant then the landlord is not responsible for any losses that incoming tenant may or not have incurred as they are not bound by a tenancy agreement. Consequently, the landlord is not entitled to hold the tenant responsible for any losses that have not been incurred. This section of the landlord's claim is dismissed.

With regard to the landlord's claim to recover \$20.00 for the cost of registered mail; there is no provision under the *Act* for costs of this nature to be awarded to a party. It is the cost of doing business as a landlord if the landlord sends her hearing documents by registered mail. This section of the landlord's claim is therefore dismissed.

As the landlord's claim has some merit I find the landlord is entitled to recover the filing fee of **\$50.00** from the tenant pursuant to s. 72(1) of the *Act*.

I Order the landlord to keep **\$450.00** from the tenant's security deposit pursuant to s. 38(4)(b) of the *Act*. The balance of the security deposit of \$150.00 must be dealt with under s. 38 of the *Act*.

Conclusion

For the reasons set out above, I grant the landlord a monetary award of **\$450.00** pursuant to Section 67 and 72(1) of the *Act*. This award has been offset against the security deposit and no Monetary Order has been issued to the landlord.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This Order must be served on the Respondent. If the Respondent fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

The landlord is at liberty to reapply for damage to the unit, site or property

The tenant's application is dismissed in its entirety without leave to reapply.

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: June 05, 2015

Residential Tenancy Branch

