



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MND, MNR, CNC, OLC, LRE, LAT, FF

Introduction

This hearing dealt with applications from both the landlords and Tenant MM under the *Residential Tenancy Act* ("the *Act*"). The landlords applied for:

- an Order of Possession for Unpaid Rent and/or Cause pursuant to section 55;
- a monetary order for unpaid rent and damage pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Tenant MM applied for:

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause ("the 1 Month Notice") pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlords' right to enter the rental unit pursuant to section 70;
- authorization to change the locks to the rental unit pursuant to section 70;
- another remedy or compensation under the *Act*; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. One of the landlords ("Landlord MS") attended the hearing and indicated that Landlord CM would be available to provide witness testimony, if necessary but could not attend the full hearing. Landlord MS and Tenant MM testified that Tenant SK had vacated the rental unit prior to this hearing and only Tenant MM remains in the rental unit. The landlords' application for a monetary award relates to both tenants while the application for an Order of Possession relates only to Tenant MM and anyone else residing in the rental unit.

Preliminary Issue: Service of Documents

Landlord MS testified that a 10 Day Notice to End Tenancy for Unpaid Rent (“the 10 Day Notice”) was posted on the door of the rental unit on April 2, 2015. The tenant confirmed receipt of the 10 Day Notice. I accept that the tenant was sufficiently served with the 10 Day Notice.

On attending the teleconference briefly, Landlord CM testified that she personally served the tenant with a 1 Month Notice to End Tenancy on March 1, 2015. The tenant testified that the landlord served the 1 Month Notice by placing it inside his rental unit without his permission. He testified that he only noticed it in a stack of papers at a much later time. He testified that, because of this lack of proper service of this notice, he was unable to respond to the 1 Month Notice until April 1, 2015 (when tenant applied for dispute resolution). The landlords submitted a Proof of Service form indicating that the 1 Month Notice was personally served to the tenant by Landlord CM.

Residential Tenancy Policy Guideline (“the Guidelines”) No. 12 addresses the provisions of service of documents under the *Residential Tenancy Act*. Where there is a conflict in the evidence respecting service or the respondent does not appear at a Dispute Resolution hearing, the applicant must be prepared to prove service. The person who served the documents must either be available as a witness to testify under oath to prove service, or provide a signed statement. At this hearing, Landlord CM testified that she served Tenant MM with the 1 Month Notice personally on March 1, 2015 at 7.00 pm in the evening. Despite only attending a portion of the hearing by teleconference, she provided clear testimony that she served the 1 Month Notice to the tenant at his rental unit door. This testimony agrees with the Proof of Service document that the landlords submitted April 21, 2015.

I find the landlords’ Proof of Service form and the testimony of Landlord CM provided sufficient evidence, meeting the standards for proof of service with respect to the 1 Month Notice. Given the sufficiency of the landlords’ evidence, I find the 1 Month Notice to End Tenancy for Cause was served to the tenant on March 1, 2015. Pursuant to section 88 of the *Act*, I find the tenant duly served on March 1, 2015 with the 1 Month Notice.

Landlord MS testified that the tenant was served with the Application for Dispute Resolution package on April 4, 2015 by registered mail. The landlords submitted copies of two Canada Post receipts and tracking numbers for these mailings. Based on Tenant MM’s acknowledgement of this mailing, I accept that Tenant MM was sufficiently served with this package. Based on the undisputed evidence and testimony of the landlord, and pursuant to section 89 and 90 of the *Act*, I find that Tenant SK was deemed served with the landlord’s dispute resolution package on April 9, 2015, 5 days after its registered mailing. Landlord MS also testified confirming receipt by the landlords of the tenant’s Application for Dispute Resolution package on April 2, 2015. Based on the confirmation of receipt of the materials from the landlord’s representative, I accept that the landlord was sufficiently served with the tenant’s Application for Dispute Resolution.

The tenant applied on April 1, 2015 to cancel the 1 Month Notice to End Tenancy dated March 1, 2015. Section 47 of the *Act* provides the tenant with an opportunity to dispute a 1 Month Notice to End Tenancy within 10 days of receiving the notice. As I have found that the tenant was duly served with the 1 Month Notice on March 1, 2015, the tenant has failed to apply within the allowable time period to dispute this notice. **Therefore, the tenant's application to cancel the 1 Month Notice to End Tenancy for Cause is dismissed.**

Landlord MS **withdrew the application for a monetary order for damage** as a result of this tenancy. The landlords continued with their application for a monetary order with respect to unpaid rent and an order of possession with respect to the rental unit.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for cause?

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and for loss?

Is the tenant/applicant entitled to any orders with respect to this tenancy, particularly; an order requiring the landlord to comply with the *Act*, an order to suspend or set conditions on the landlord's right to enter the rental unit and authorization to change the locks to the rental unit? Is the tenant/applicant entitled to another remedy or compensation under the *Act*? Is the tenant/applicant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

This one year fixed term tenancy began on July 1, 2014 with a rental amount of \$1300.00 payable on the first of each month. The tenant testified that the landlords continue to hold a \$650.00 security deposit paid by the tenant in June 2013 when the previous fixed term tenancy began. Landlord MS testified that the tenant never paid the security deposit for this tenancy. The landlords submitted a copy of the tenancy agreement as evidence in this hearing. Under the Security Deposit section, it indicates that a security deposit of \$650.00 was payable on January 21, 2015, the date that the agreement was signed by all parties.

The tenant made an application to have the landlord comply with the *Act*. The tenant also made an application for a number of orders with respect to the landlord's behaviour including; compliance generally with the *Act* and unauthorized entry by the landlord to the rental unit and authorization to change the locks on the rental unit.

The landlord applied for an end to this tenancy for cause under section 47 of the *Act* relying on the following grounds;

- the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid;
- the tenant is repeatedly late paying rent;
- there are an unreasonable number of occupants in a rental unit;

- the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant of the residential property; and
- the tenant has failed to comply with a material term and has not corrected the situation within a reasonable time.

The landlord testified that the tenant did not pay the security deposit due for his rental unit and that the tenant was repeatedly late paying rent. The landlord did not supply evidence that related directly to the late payment of rent or to any further action taken when the security deposit was not paid.

The landlord testified that there are regularly an unreasonable number of occupants in the rental unit and that the tenant or those occupants/guests had interfered significantly with and unreasonably disturbed other occupants on the residential property. In support of this testimony, the landlords submitted a letter from the strata council dated February 23, 2015 advising the landlords/owners of the property that there has been “multiple complaints from other residents of the complex that excessive noises from the flooring are emanating from your unit.” That letter indicates a fine may be imposed in the future. As a result of further actions of the tenant, a fine of \$200.00 was levied against the landlords by the strata council.

Another series of letters dated from March 2015 advise the landlords that water damage to a variety of suites in the building has been found to originate with the tenant’s suite. The landlord was advised, in this correspondence, that the cost of emergency clean-up may be levied against them. At the time of this hearing, the landlord’s testified that they are only aware of estimated costs and will be dealing with an insurance company to determine the final cost.

The landlord’s representative and Landlord CM testified that they provided a copy of all letters from the strata to the tenant. Letters from the strata council over 2014 were also submitted by the landlords as evidence for this hearing. Those letters included indications such as, “strata council is in receipt of a written complaint that your tenant(s) caused a nuisance to other tenants by spitting onto patios below on June 2, 2014” and “strata council is in receipt of a written complaint that your tenants left garbage and equipment scattered around the common property exercise room on April 30, 2014”. Other letters of the same nature dated 2013 provide similar complaint information.

In submitting that the tenant has failed to comply with a material term of the tenancy, the landlord referred to the complaint letters from the strata council. Landlord MS testified that the tenant is subject to the rules and terms of the strata as part of his tenancy agreement. Landlord MS testified that, as a result of the tenant’s ongoing disruptive actions, the landlords have now been fined a total of \$200.00 and will likely be subject to substantially more costs for water damage to other units.

The tenant testified and provided written submissions that he was an “exceptional tenant when it came to paying ... rent on time and living by the guidelines set forth by the [strata].” He submitted that the landlords breached the rental agreement on several occasions by entering the rental unit without his permission and obstructing his legal rights as a tenant. While the tenant submitted a written statement indicating that he has kept records documenting all transactions relating to this tenancy, he did not submit those records for this hearing. At the hearing, the tenant testified to the landlords’ lack of consideration of his privacy and tenant rights. He also testified that he sought more time to find a new residence.

Analysis

The landlord applied for an end to this tenancy, and an Order of Possession based on several grounds for cause under section 47 of the *Act*;

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

(a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;

(b) the tenant is repeatedly late paying rent;

(c) there are an unreasonable number of occupants in a rental unit;

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

...

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so...

Landlord MS testified that the tenant did not pay the security deposit. However, he did not supply any documentary evidence that supported this testimony. The tenant claimed that he did pay his security deposit. I accept the testimony of the tenant with respect to the payment of the security deposit. I find that this testimony was in keeping with the information provided in the tenancy agreement. I also find that the tenant’s claim that he paid this deposit is a reasonable assertion given the length of this tenancy.

The landlords applied for an Order of Possession, relying on 2 separate Notices to End Tenancy. I have found that those notices were served to the tenant in accordance with the *Act*. The landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent on April 2, 2015. The

landlords provided undisputed testimony that the tenant did not pay the April 2015 rent after receiving the 10 Day Notice. The landlords provided undisputed testimony that the tenant continues to reside in the rental unit and that he has not paid rent for either April or May 2015.

The tenant failed to pay the April 2015 rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant did not make an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by the corrected effective date of April 15, 2015. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

Given my finding with respect to the tenant's failure to respond to the 10 Day Notice to End Tenancy, I need not consider the tenant's application to cancel the 1 Month Notice to End Tenancy. However, I note that, based on both the landlords' testimony which is supported by documentary evidence, I am satisfied that the landlords had sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for cause. While the tenant did make an application pursuant to section 47(4) of the *Act*, the tenant made that application outside the allowable timeframe to dispute the notice.

I note that Landlord MS and Landlord CM testified to ongoing reports of disruptive behaviour from the strata council as well as direct complaints from neighbours. The landlords submitted documentary evidence in the form of a multitude of letters of complaint and by-law infractions from the strata council with direct indication of the tenant's responsibility for those complaints. The landlords are required to show, on a balance of probabilities that they had cause, specifically in the grounds identified in their 1 Month Notice to justify the end of the tenancy.

I find that, even if the landlords had not shown that the tenant has failed to pay rent in accordance with the *Act*, they have shown that the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant of the residential property. The landlords have provided sufficient evidence to support an application for an Order of Possession for Cause.

The landlords applied to recover the strata by-law fine levied against them as a result of behaviour by the tenant. The landlords must provide evidence of this loss, that it relates directly to actions of the tenant and that they have, in fact incurred this loss. While the landlords have shown that the strata imposed a fine to the owners/landlords and that the fine was as a result of the tenant's actions or behaviour, the landlords provided no evidence at this time to prove they have paid this fine and incurred this financial loss. I dismiss the landlords' application to recover the strata fine with leave to re-apply.

Given the date of this decision and the fact that the tenant continues to reside in the rental unit, I find that the landlord is entitled to recover a portion of June 2015 rent. I find that the landlord is entitled to \$650.00 for half a months' rent to ensure that they are in a position to make efforts to provide notice to the tenant of the end of tenancy and to re-rent the unit before the end of the month. As previously stated, I find the landlords are entitled to two months' rent totalling

\$2600.00 for rental arrears in April 2015 and May 2015. Further, I find the landlords are entitled to \$650.00 towards June 2015 rent or any loss they may incur for the month of June.

The tenant applied for a number of remedies that relate to the behaviour of the landlords in the event of an ongoing tenancy. Given that I have found this tenancy to have ended, I dismiss the tenant's application, including an application to have the landlord comply with the *Act* and to make an order with respect to the landlords' access to the rental unit, without leave to reapply. As the tenant has been unsuccessful in his application, I find that he is also not entitled to recover his filing fee.

Landlord MS testified that he received no security deposit from the tenant. However, the residential tenancy agreement submitted in this matter identifies an amount of \$650.00 paid by the tenant on January 21, 2015. I find that the landlord holds a security deposit paid by the tenant and pursuant to section 72(2) of the *Act*, I will allow the landlords to retain the security deposit plus any interest payable in partial satisfaction of the monetary award. There is no interest payable for this period.

As the landlords were successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

The tenant's application in its entirety is dismissed without leave to re-apply.

The landlords' withdrew the application for a monetary order for damage to the rental unit. Therefore, that application is withdrawn.

I grant the landlords an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

The landlords' application to recover strata fines or fees is dismissed with leave to re-apply.

I issue a monetary Order in favour of the landlords as follows:

Rental Arrears for April and May 2015 (\$1300.00 x 2)	\$2600.00
Rent/Loss in June	650.00
Less Security Deposit	-650.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$2650.00

The landlords are provided with formal Orders in the above terms. Should the **tenant(s)** fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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 3, 2015

Residential Tenancy Branch

