



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: ET, OPC, OPB, MND, MNDC, MNSD, FF
MT, CNC, RPP, LRE, FF

Introduction

This hearing concerns 2 applications:

- i) by the landlord for and early end to tenancy / an order of possession / a monetary order as compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; and
- ii) by the tenants for more time to make an application to cancel a notice to end tenancy / cancellation of a notice to end tenancy for cause / an order instructing the landlord to return the tenants' personal property / an order suspending or setting conditions on the landlord's right to enter the rental unit / and recovery of the filing fee.

Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on March 15, 2013. Monthly rent of \$925.00 is due and payable in advance on the first day of each month, and a security deposit of \$462.00 was collected. A move-in condition inspection report was not completed.

Pursuant to section 47 of the Act which addresses **Landlord's notice: cause**, the landlord issued a 1 month notice to end tenancy dated May 20, 2015. The notice was personally served on that same date. A copy of the notice was submitted in evidence.

The date shown by when the tenants must vacate the unit is June 30, 2015, and there are 12 different reasons identified in support of its issuance, 1 of which is as follows:

Tenant is repeatedly late paying rent

The tenants filed an application to dispute the notice on May 29, 2015. The landlord's application for dispute resolution was filed on June 06, 2015.

Analysis

Based on the documentary evidence and testimony, the various aspects of the respective applications and my related findings are set out below.

LANDLORD

Order of Possession

Section 47(1)(b) of the Act provides as follows:

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

(b) the tenant is repeatedly late paying rent;

Residential Tenancy Policy Guideline # 38 speaks to "Repeated Late Payment of Rent," in part:

Three late payments are the minimum number sufficient to justify a notice under these provisions.

As previously noted, the tenancy agreement provides that rent is due and payable in advance on the first day of each month. Further in this regard, by letter dated July 22, 2014, the landlord informed the tenants, in part, as follows:

Additionally, from this day forward, your rent will be due and payable in full on the first of the month in accordance with the Residential Tenancy Agreement and as per our written contract.

Evidence submitted by the landlord documents late payment of rent on at least 3 occasions subsequent to the landlord's letter of July 22, 2014. In the result, I find that

the landlord has established entitlement to an **order of possession** on the basis of this ground. Accordingly, the tenants' application for cancellation of the notice is hereby set aside, and there is no requirement that I address the merits of any of the other reasons identified on the 1 month notice in support of its issuance.

\$2,000.00: *shed rental (\$200.00 per month x 10 months from August 2014 to May 2015)*

Documentary evidence pertinent to this aspect of the landlord's claim, which arises from allegedly unauthorized entry and use of the shed, is limited to the landlord's letter to the tenants dated July 22, 2014. In this letter the landlord states in part, as follows:

If you continue to store your items in the shed, please be advised that I will expect an additional \$200.00 per month for rental of the shed.

While there may also have been text messages exchanged between the parties in regard to this matter, copies of none of them are in evidence.

Section 14 of the Act addresses **Changes to tenancy agreement**, in part:

14(1) A tenancy agreement may not be amended to change or remove a standard term.

(2) A tenancy agreement may be amended to add, remove or change term, other than a standard term, only if both the landlord and tenant agree to the amendment.

Given the limited documentary evidence, and in the absence of any provision in the tenancy agreement concerning use of the shed, or evidence of a mutual agreement to amend the tenancy agreement in this regard, this aspect of the application is dismissed.

\$955.50: *miscellaneous repairs to damage*
\$80.64: *replacement / repairs to blinds*
\$200.00: *unit cleaning*
\$6,500.00: *replacement / repairs to cupboards*
\$250.00: *reinstallation of appliances*

As tenancy has not ended, and as the costs claimed above are limited to estimates of costs anticipated, each of them is presently hereby dismissed with leave to reapply.

\$50.00: *filing fee*

As the landlord has succeeded with a principal aspect of her application, I find that she has also established entitlement to recovery of the filing fee. I order that the landlord may withhold \$50.00 from the security deposit in order to recover this fee.

Retention of the security deposit

Further to the finding set out immediately above, the landlord's application to retain all or any portion of the balance of the security deposit is dismissed with leave to reapply.

TENANTS

More time to make an application to cancel a notice to end tenancy for cause

As the tenants filed an application to cancel the notice to end tenancy within the statutory 10 day period available for doing so after receipt of the notice, I find there is no requirement that the tenants apply for more time to make such an application.

Cancellation of a notice to end tenancy for cause

As set out above, this aspect of the tenants' application has been set aside, and I have found that the landlord has established entitlement to an order of possession.

Order instructing the landlord to return the tenants' personal property

During the hearing the tenants withdrew this aspect of their original application.

Order suspending or setting conditions on the landlord's right to enter the rental unit

This aspect of the application arose from circumstances surrounding 1 particular occasion during the tenancy when the tenants objected to the landlord's entry to the

unit. I find that there is presently no practical purpose for issuing the order requested, and so this aspect of the application is hereby dismissed. Nevertheless, the attention of the parties is drawn to the following particular sections of the Act:

Section 28: **Protection of tenant's right to quiet enjoyment**

Section 29: **Landlord's right to enter rental unit restricted**

\$50.00: *filing fee*

As the tenants have not succeeded with the main aspects of their application, their application to recover the filing fee is hereby dismissed.

Finally, the attention of the parties is drawn to the following sections of the Act:

Section 37: **Leaving the rental unit at the end of a tenancy**

Section 38: **Return of security deposit and pet damage deposit**

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **Friday, July 31, 2015**. This order must be served on the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I order the landlord to withhold **\$50.00** from the security deposit for recovery of the filing fee. Other aspects of the application are dismissed or dismissed with leave to reapply.

Aspects of the tenants' application are variously either withdrawn or dismissed.

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: July 20, 2015

Residential Tenancy Branch

