



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1007 in order to enable the tenant to connect with this teleconference hearing scheduled for 0930. The landlords attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord XC (the landlord) provided testimony on behalf of the landlords through their translator.

Amendment to Landlords' Claim

The landlord testified that the tenant paid August's rent. The landlord asked to amend the landlords' application to remove the claim for August's rent. As there is no prejudice to the tenant in allowing this amendment, it is allowed.

The landlords claim for \$5,752.51:

| Item | Amount |
|-------------------------------------|-------------------|
| Flood Repair Insurance Deductible | \$5,000.00 |
| Registered Mailing | 21.21 |
| Filing Fee And Costs Direct Request | 100.00 |
| Cleaning Costs | 400.00 |
| Registered Mailing | 30.00 |
| Washer/Dryer Hook Up | 201.31 |
| Total Monetary Order Sought | \$5,752.52 |

Service of Documents

The landlord testified that the landlords served the tenant with the dispute resolution package on 17 June 2015 by registered mail. The landlord provided me with a Canada Post tracking number. The landlord testified that the package was returned as the tenant did not retrieve the mailing.

The landlord testified that the landlords served the added evidence and amended application to the tenant by registered mail. The landlord testified that the package was returned as the tenant did not retrieve the mailing.

The landlord testified that the landlords served the tenant with the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on 16 May 2015 by registered mail. The landlord provided me with a Canada Post tracking number. The landlord testified that the package was returned as the tenant did not retrieve the mailing.

Residential Tenancy Policy Guideline, "12. Service Provisions" sets out that service cannot be avoided by failing to retrieve the mailing:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

On the basis of the above evidence and pursuant to Policy Guideline 12:

- I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.
- I am satisfied that the tenant was deemed served with the evidence and amended application pursuant to sections 89 and 90 of the Act.

- I am satisfied that the tenant was deemed served with the 1 Month Notice pursuant to sections 88 and 90 of the Act.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for cause? Are the landlords entitled to a monetary award for damage to the rental unit and losses arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 August 2013. The parties entered into a written tenancy agreement on 27 July 2013. Monthly rent is \$1,250.00 and is due on the first. The landlord continues to hold the tenant's security deposit in the amount of \$700.00 and the tenant's key deposit in the amount of \$100.00, which were collected at the beginning of this tenancy. The rental unit is a townhouse-style dwelling.

The landlord testified that payments were almost always made by the tenant depositing the amount directly into the landlords' account or by electronic transfer. The landlord testified that on one occasion the tenant paid rent in cash.

The landlords provided documentation which disclosed the following late payments:

| Rent Due | Paid in Full by |
|-----------------|------------------------|
| 1 February 2014 | 3 February 2014 |
| 1 March 2014 | 3 March 2014 |
| 1 April 2014 | 14 April 2014 |
| 1 May 2014 | 5 May 2014 |
| 1 June 2014 | 4 June 2014 |
| 1 July 2014 | 17 July 2014 |
| 1 August 2014 | 7 August 2014 |
| 1 October 2014 | 8 October 2014 |
| 1 November 2014 | 3 November 2014 |

| | |
|-----------------|-----------------|
| 1 December 2014 | 4 December 2014 |
| 1 February 2015 | 3 February 2015 |
| 1 March 2015 | 3 March 2015 |

These late payments were confirmed in oral testimony.

On or about 31 August 2014 the parking area of the residential property flooded. I was provided with a copy of the loss report in respect of the insurance claim. The report is dated 23 September 2014. The report notes the following:

- *[repair company] arrived onsite and tracked issue from the parade to [the rental unit]...*
- *The laundry closet was investigated finding the washer and hot water tank drip pan full of sewage.*
- *[plumber] called as issue was suspected to be drainage problem, causing back up...*

I was provided with a plumber report dated 31 August 2014. That report notes the following details:

- *...attended site on an emergency overtime call to inspect kitchen sink and hot water tank line clogged in [rental unit]...*
- *Inspected issue and found common drain line for kitchen sink and hot water tank was clogged...*
- *Attempted to use auger to clear the drain*
- *The blockage in the pipe was too large for the auger we had...*
- *Left site to go back to shop and get larger auger*
- *Returned to site*
- *Augered kitchen sink drain but auger kept getting stuck halfway*
- *Went to parade and opened part of the drain pipe to inspect*
- *Found drain pipe complete clogged with food and grease*

I was provided with a letter dated 9 January 2015 from the strata management company:

The reports from [company] state that the area that was blocked was common property; however, the blockage originated in your unit. Therefore the chargeback amount will remain on your account.

Please remit payment of the insurance deductible in the amount of Five Thousand Dollars (\$5,000.00) upon receipt of this letter...

The landlord testified that there was a large volume of food debris in the drain pipe.

The landlords paid this amount to the strata corporation. The landlords sought restitution from the tenant on 4 May 2015.

On 16 May 2015 the landlords issued the 1 Month Notice to the tenant. The 1 Month Notice set out an effective date of 30 June 2015. The 1 Month Notice set out that it was being given as:

- the tenant is repeatedly late paying rent; and
- the tenant has caused extraordinary damage to the unit.

On 6 July 2015, the strata corporation billed the landlord for \$201.31 in respect of work done to reattach the washer and dryer after the flood repairs. The landlord testified that this work was not covered by the strata's insurance.

The landlord testified that he has told the tenants on many occasions about this dispute. In particular, he told the tenant that as she was repeatedly late paying rent and caused the flooding damage, he was seeking to end the tenancy. Further, he informed the tenant that he was going to apply to the Residential Tenancy Branch for compensation.

The tenancy has not yet ended. The landlord testified that he has been in the rental unit twice recently and the rental unit is in poor repair. The landlords seek the cost of their estimated cleaning costs.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met. Paragraph 47(1)(b) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant has been repeatedly late paying rent. *Residential Tenancy Policy Guideline*, "38. Repeated Late Payment of Rent" provides that a minimum of three late payments constitutes cause pursuant to paragraph 47(1)(b).

Pursuant to section 26 of the Act, the tenants have the obligation to pay their rent when it is due under the tenancy agreement. The tenancy agreement sets out that rent is due on the first. I was not provided any evidence that indicates that the landlords waived their right to rent when due.

I was provided with documentary evidence that shows that in the last 18 months the tenant has paid rent late on 12 occasions. On three occasions rent was over one week

late. On this basis, I find that the landlords have established that the tenant has been repeatedly late paying her rent. Furthermore, and pursuant to subsection 47(5), the 1 Month Notice states that the tenant had ten days, from the date of service of that notice, to apply for dispute resolution or the tenant would be presumed to have accepted that the tenancy would end on the effective date of the 1 Month Notice. The tenant did not apply to dispute the 1 Month Notice within ten days from the date of service. For the reasons outlined above, I find that the 1 Month Notice is validly issued and will not consider the other reason for cause set out by the landlords in the 1 Month Notice.

The landlord testified that the tenant paid her rent for August. As the 1 Month Notice is valid, the landlords are entitled to an order of possession effective 31 August 2015.

Subsection 32(3) of the Act requires a tenant to repair damage to the rental unit or common areas that was caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Caused means that the actions of the tenant or his visitor logically led to the damage of which the landlord complains.

The landlord provided sworn and uncontested testimony that the tenant's neglectful management of the kitchen sink led to food and grease entering the drain pipe. The food and grease amassed to block the drain pipe and led to the flooding of the parkade area. I find that the tenant's actions or neglect caused damage to the rental unit and common property and that the tenant is obligated to repair the damage.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

The landlords provided me with evidence of costs in the amount of \$5,201.31 (\$5,000.00 and \$201.31). I find that the landlords incurred these costs to repair the damage caused by the tenant. The landlords were not in the position to mitigate the damage to any greater extent. As such, the landlords are entitled to recover this amount from the tenant.

The landlords apply for their cleaning costs. As the tenancy has not yet ended, this claim is premature. As such, the landlords are not entitled to this amount at this time. This does not mean that the landlords cannot apply for their cleaning costs in the event the tenant does leave the rental unit in a condition that does not comply with the Act.

The landlords claim for the cost of their registered mailings. The landlords also claim for costs associated with a past direct request application. These costs are best characterized as “disbursements” incurred in the course of these proceedings.

Section 72 of the Act allows for repayment of fees for starting dispute resolution proceedings and charged by the Residential Tenancy Branch. While provisions regarding costs are provided for in court proceedings, they are specifically not included in the Act. I conclude that this exclusion is intentional and includes disbursement costs. Furthermore, I find that disbursements are not properly compensable pursuant to section 67 of the Act as the tenant’s contravention of the Act is not the proximate cause of the expense.

I find that the landlords are not entitled to compensation for the landlords’ disbursement costs as disbursements are not a cost that is compensable under the Act.

The landlords applied to keep the tenant’s security deposit. I allow the landlords to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlords have been successful in their claim, they are entitled to recover the filing fee from the tenant.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$4,501.31 under the following terms:

| Item | Amount |
|---------------------------------------------|-------------------|
| Flood Repair Insurance Deductible | \$5,000.00 |
| Washer/Dryer Hook Up | 201.31 |
| Offset Security and Key Deposits | -800.00 |
| Recovery of Filing Fee for this Application | 100.00 |
| Total Monetary Order | \$4,501.31 |

The landlords are provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The landlords are provided with a formal copy of an order of possession effective 31 August 2015. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: August 14, 2015

Residential Tenancy Branch

