



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF; CNC, MNDC, MNSD, RP, LRE, FF, O

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;
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

This hearing also dealt with the tenants' application pursuant to the Act for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72; and
- an "other" remedy.

The tenants did not attend this hearing, although I waited until 1122 in order to enable the tenants to connect with this teleconference hearing scheduled for 1100. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord indicated that the tenant DL stated that he would be vacating the rental unit on 1 November 2015. At the hearing, the landlord stated that in the event I grant an order of possession, she seeks an order dated 1 November 2015.

Preliminary Issue - Service

The landlord indicated at the hearing that the tenant FO no longer resides in the rental unit. The landlord indicated that the tenant DL still resides in the unit.

The landlord testified that she served the tenants with the dispute resolution package on 17 August 2015 by registered mail. The landlord testified that the dispute resolution package included all evidence before me. The landlord served both tenants at the address for the rental unit. The landlord provided me with a Canada Post customer receipt that showed the same.

Service of the dispute resolution package for an application such as the landlord's must be carried out in accordance with subsection 89(1) of the Act:

- (1) An application for dispute resolution ... when required to be given to one party by another, must be given in one of the following ways:
 - (a) by leaving a copy with the person;...
 - (c) by sending a copy by registered mail to the address at which the person resides or...
 - (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;...

On the basis of this evidence, the tenant FO does not reside at the rental unit. As such, the landlord has failed to serve the tenant FO with the dispute resolution package. The landlord's claim against the tenant FO is dismissed with leave to reapply. The tenant DL still resides at the rental unit. Accordingly, I am satisfied that the tenant DL was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act. The landlord's claim against DL will proceed.

Disposition of Tenants' Claim

The tenants bear the onus of proving, on a balance of probabilities, their entitlement to the following remedies:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;

- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72; and
- an "other" remedy.

Rule 10.1 of the Rules of Procedure provides that:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any evidence or submissions from the tenants and in the absence of the tenants' participation in this hearing, I order the above-mentioned portions of the tenants' application dismissed without leave to reapply.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession? ? Is the landlord entitled to recover the filing fee for this application from the tenants?

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 respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenants' claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began 14 October 2014. The tenancy was for a fixed term ending 1 November 2015. Monthly rent of \$1,300.00 is due on the first. The landlord continues to hold the tenants security deposit in the amount of \$650.00, which was collected at the beginning of the tenancy.

On 15 July 2015, the landlord served the 1 Month Notice to the tenant by posting the notice to the tenants' door. The 1 Month Notice set out an effective date of 1 September 2015. The 1 Month Notice set out that it was being given as:

- the tenant is repeatedly late paying rent; and

- the tenant or person permitted on the property by the tenant has put the landlord's property at significant risk.

The landlord testified that the tenant paid rent late on the following occasions:

- rent due 1 May 2014 was paid in full by 2 May 2014;
- rent due 1 August 2014 was paid in full by 2 August 2014;
- rent due 1 December 2014 was paid in full by 31 December 2014; and
- rent due 1 July 2015 was paid in full 14 July 2015.

The landlord provided copies of the electronic transfers that confirm the above payment dates.

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). In exceptional circumstances the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

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.

The landlord has provided sworn and uncontested testimony corroborated by documentation that the tenant paid rent late four times over the course of the tenancy. These late payments have occurred over a relatively short time period. I find that the landlord has shown that the tenant has been repeatedly late paying rent. As such, the landlord has shown that the 1 Month Notice is valid. As the 1 Month Notice is valid the tenants' application to cancel the 1 Month Notice is dismissed. The landlord's application for an order of possession is granted. As the landlord has consented to a longer possession period, the order of possession is effective at one o'clock in the afternoon on 1 November 2015.

As the landlord has been successful in her application, she is entitled to recover her filing fee from the tenant.

Conclusion

The landlord is provided with a formal copy of an order of possession effective 1 November 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.

I issue a monetary order in the landlord's favour in the amount of \$50.00. The landlord is provided with this order 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.

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: October 08, 2015

Residential Tenancy Branch

