



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPC, MND, FF, CNC

Introduction

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

- an order of possession for cause pursuant to section 55;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing by conference call and gave undisputed affirmed testimony. The tenant confirmed receipt of the landlords' notice of hearing package and their submitted documentary evidence. The landlords confirmed receipt of the tenant's notice of hearing package and their submitted documentary evidence. Based upon the undisputed affirmed testimony of both parties, I find that both parties have been properly served with the notice of hearing packages and each party's submitted documentary evidence as per section 88 and 89 of the *Act*.

At the outset the landlords withdrew their monetary application for damage to the unit. No objections were noted by the tenant. As such, no further action is required for this portion of the landlords claim. The hearing proceeded on the landlords request for an order of possession and the tenant's a request for an order cancelling the notice to end tenancy.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order to recover the filing fee?
Is the tenant entitled to an order cancelling the notice to end tenancy?
Is the tenant entitled to a monetary order to recover the filing fee?

Background and Evidence

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

This tenancy began on October 15, 2010 on a fixed term tenancy ending on October 31, 2011 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated October 1, 2010. The monthly rent began as \$1,675.00 and then became \$1,740.00 payable on the 1st day of each month and a security deposit of \$832.00 and a pet damage deposit of \$832.00 were paid.

Both parties confirmed that on August 28, 2015, the landlord served the tenant with the 1 Month Notice in person. The landlord has submitted a copy of a proof of service document which shows that the tenant's son signed in receipt for the package. The 1 Month Notice shows an effective end of tenancy date of September 30, 2015 and sets out that it was being given as:

- the tenant is repeatedly late paying rent;
- the tenant or person permitted on the property by the tenant has:
 - put the landlord's property at significant risk; or
- the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
- the tenant has caused extraordinary damage to the unit.
- Tenant has not done required repairs of damage to the unit/site.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlords gave undisputed affirmed testimony based upon page 22 of the landlords submitted documentary evidence binder. The landlords stated that the tenant was repeatedly late paying rent on the following dates:

July 11, 2014	Paid	\$1,740.00
August 22, 2014	Paid	\$1,740.00
November 5, 2014	Paid	\$1,700.00
December 2, 2014	Paid	\$1,740.00
January 9, 2015	Paid	\$1,740.00

February 23, 2015	Paid	\$1,740.00
March 12, 2015	Paid	\$1,600.00
April 2, 2015	Paid	\$140.00
May 5, 2015	Paid	\$500.00
June 5, 2015	Paid	\$540.00
July 21, 2015	Paid	\$1,740.00

The tenant confirmed in her direct testimony that she was repeatedly late paying rent as claimed by the landlords, but stated that on one occasion it was due to a family death. The tenant stated that since the 1 Month Notice was served that there has been no further late rent payments. The tenant stated that the landlords had been very understanding and were fine with the previous late rent payments.

The landlords disputed that they were not fine with the tenant's repeated late rent payments. The landlords stated that it was not acceptable and had issued two 10 Day Notice's to End Tenancy issued for Unpaid Rent on August 20, 2014 and again on July 8, 2015. The landlords stated that they were tired of chasing the tenant for the monthly rent when it was due. The tenant confirmed that the landlord had issued her the 10 Day Notices for Unpaid Rent.

Analysis

Both parties gave undisputed affirmed testimony that the landlords served the tenant with the 1 Month Notice dated August 28, 2015 by serving it in person as stated by the landlords' submitted proof of service document. As such, I find that the landlords did serve the tenant with the 1 Month Notice in person and is deemed served on the same date of August 28, 2015 as per section 90 of the Act.

Residential Tenancy Branch Policy Guideline #38 (Repeated Late Payment of Rent) states in part,

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

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

The landlords provided undisputed affirmed testimony that the tenant was repeatedly late paying rent on 12 occasions between July 2014 and July 2015 (12 month period). The landlords' undisputed affirmed claims of repeated late rent payments were confirmed by the tenant's affirmed direct testimony that she was repeatedly late paying rent during the times indicated by the landlord.

I find based upon the undisputed affirmed testimony of both parties that the landlord has established a claim for an order of possession as a result of the 1 Month Notice dated August 28, 2015. The 1 Month Notice is upheld. The landlords' application for an order of possession is granted.

As it has been confirmed by the tenant's own direct testimony that there were repeatedly late rent payments, I find that it is unnecessary to make a finding on the landlords remaining merits for cause.

As the landlord was 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 is dismissed.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). 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 grant a Monetary Order to the landlord of \$50.00 for recovery of the filing fee. Should the tenant 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 04, 2015

Residential Tenancy Branch

