



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPC, MNR, MND, MNDS, MNDC, FF

Introduction

This hearing was convened in response to cross applications.

On May 10, 2016 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied: an Order of Possession for Cause;

- for a monetary Order for unpaid rent;
- for a monetary Order for money owed or compensation for damage or loss;
- to retain all or part of the security deposit; and
- to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on May 13, 2015 the Application for Dispute Resolution and the Notice of Hearing were served to the Respondent named on the Landlord's Application for Dispute Resolution, via registered mail. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served to the Respondent named on the Landlord's Application for Dispute Resolution, whom will be referred to as the Tenant, in accordance with section 89 of the *Residential Tenancy Act* (Act). The Tenant did not appear at the hearing and the proceedings commenced in her absence.

On May 20, 2016 the Landlord submitted 46 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was personally served to an adult female who lives with the Tenant on May 20, 2016. In the absence of evidence to the contrary I find that this evidence was served to the Tenant in accordance with section 88 of the Act and it was accepted as evidence for these proceedings.

On May 03, 2016 the Tenant and two other Applicants filed an Application for Dispute Resolution, in which they applied:

to cancel a Notice to End Tenancy for Cause

- for a monetary Order for money owed or compensation for damage or loss;
- for an Order requiring the Landlord to make repairs to the rental unit;

- for an Order requiring the Landlord to provide services or facilities;
- for authority to change the locks to the rental unit;
- for an Order setting conditions on the Landlord's right to enter the rental unit;
- to recover the cost of emergency repairs;
- for an Order requiring the Landlord to comply with the *Residential Tenancy Act* (Act) or the tenancy agreement; and
- for authority to reduce the rent.

Preliminary Matter #1

The hearing was scheduled for 9:00 a.m. on June 01, 2016. The hearing commenced at the schedule start time; the hearing ended sometime after 9:15 a.m. on June 01, 2016; and the Applicants named on the Tenants' Application for Dispute Resolution did not appear prior to the conclusion of the hearing.

I find that the Tenants failed to diligently pursue their Application for Dispute Resolution and I therefore dismiss their application without leave to reapply.

Preliminary Matter #2

The Landlord applied for a monetary Order of \$10,000.00. In the Details of Dispute section of the Application for Dispute Resolution the Landlord declared that it was seeking \$1,001.98 in unpaid rent, a NSF fee of \$25.00, a late fee of \$25.00, and compensation for damage to the unit in an undisclosed amount. These claims will be considered at these proceedings.

In the evidence package that was submitted to the Residential Tenancy Branch on May 20, 2016 the Landlord submitted a Monetary Order Worksheet in which the Landlord declares it is seeking \$7,000.90 in compensation for repairs to the rental unit. The Agent for the Landlord stated that these claims are related to unauthorized changes the Tenant made to the rental unit and the cost of restoring the unit to its original condition.

Section 37(2) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property. This section of the *Act* requires a tenant to leave the rental unit in its original condition when the rental unit is vacated unless the Landlord gave the Tenant authority to make changes to the rental unit.

As the Tenant is still occupying the rental unit I find that the Landlord's claim for compensation for changes the Tenant made to the rental unit is premature. I find it entirely possible that the Tenant will comply with her obligations under section 37(2) of the *Act* prior to vacating the unit. In the event the Tenant fails to restore the rental unit

to its original condition when the unit is vacated, the Landlord retains the right to file another Application for Dispute Resolution seeking compensation for repairing the unit.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to compensation for unpaid rent, a late payment fee, and an NSF fee?

Is the Landlord entitled to retain the security deposit?

Background and Evidence

The Agent for the Landlord stated that:

- this tenancy began on February 03, 2014;
- at the end of the tenancy the Tenant was required to pay monthly rent of \$1,001.98 by the first day of each month;
- a One Month Notice to End Tenancy for Cause, which had an effective date of May 31, 2016, was posted on the door of the rental unit on April 25, 2016;
- the One Month Notice to End Tenancy declared that the Landlord wishes to end the tenancy because the Tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after receiving written notice to do so;
- the rent has not been paid for May of 2016; and
- the Tenant is still occupying the rental unit.

The Landlord submitted a copy of a tenancy agreement, which appears to be signed by the Tenant which declares, in part that:

- the Tenant paid a security deposit of \$475.00 and a pet damage deposit of \$475.00;
- the Tenant will pay a \$25.00 fee when payments are not made on time or when a cheque is returned due to insufficient funds; and
- the Tenant must not change the locks to the rental unit unless the Landlord agrees, in writing, to the change or a Dispute Resolution Officer has ordered the change.

The Landlord submitted a copy of an addendum to the tenancy agreement which declares, in part, that the "Tenant will not make or cause any structural alteration" to the rental unit.

The Landlord stated that the preauthorized May rent payment was not honored by the Tenant's financial institution due to insufficient funds. The Landlord is seeking \$1,001.98 in unpaid rent, a \$25.00 NSF fee for the rent payment that was not honored, and a \$25.00 late fee because rent for May is still outstanding.

The Agent for the Landlord stated that the Landlord issued the One Month Notice to End Tenancy because the Tenant breached a material term of the tenancy agreement when the Tenant changed the lock to the rental unit without authority and because the Tenant breached a material term of the tenancy agreement when the Tenant made significant renovations to the bathroom.

The Agent for the Landlord stated that the Landlord served the Tenant with a letter, dated April 04, 2016, in which the Landlord directed the Tenant to restore the rental unit to its original condition by April 22, 2016. A copy of this letter was submitted in evidence.

The Landlord submitted a copy of the One Month Notice to End Tenancy that was posted on the door of the rental unit on April 25, 2016.

Analysis

On the basis of the undisputed evidence I find that the Tenant entered into a tenancy agreement; that the Tenant is currently required to pay rent of \$1,001.98 by the first day of each month, and that rent has not been paid for May of 2016. As the Tenant is required to pay rent when it is due, pursuant to section 26 of the *Act*, I find that the Tenant owes \$1,001.98 in rent.

As the Tenant has not yet paid rent for May of 2016 and the tenancy agreement requires the Tenant to pay a fee of \$25.00 whenever rent is not paid when it is due, I find that the Landlord is entitled to a late fee of \$25.00 for May of 2016.

As the Tenant's rent payment for May of 2016 was not honored by her financial institution and the tenancy agreement requires the Tenant to pay a \$25.00 NSF in these circumstances, I find that the Landlord is entitled to an NSF fee of \$25.00 for May of 2016.

On the basis of the undisputed evidence I find that the Landlord posted a One Month Notice to End Tenancy for Cause on the Tenant's door on April 25, 2016, which declared the Tenant must vacate the rental unit by May 31, 2016.

Section 55(1) of the *Act* stipulates that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 of the *Act* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the Tenant's Application for Dispute Resolution in which the Tenant applied to cancel the One Month Notice to End Tenancy for Cause and the Notice to End Tenancy appears to comply with section 52 of the *Act*, I must grant the Landlord an Order of Possession.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$1,151.98, which includes \$1,001.98 in unpaid rent, a \$25.00 late fee, a \$25.00 NSF fee, and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit and pet damage deposit of \$950.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$201.98. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The monetary Order and Order of Possession are in the name of the Tenant only, as she is the only Respondent named on the Landlord's Application for Dispute Resolution.

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 01, 2016

Residential Tenancy Branch