



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPB MNDC MNSD

Introduction

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

- an order of possession for breach of an agreement 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 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 the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Issues

Is the landlord entitled to an order of possession for breach of an agreement?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

Background and Evidence

The tenancy began on February 2015 with a monthly rent of \$800.00 payable on the 1st day of each month. The tenancy agreement was a fixed term tenancy ending on June 30, 2016. On June 30, 2016 the parties entered into a new tenancy agreement providing the tenant with an extension to the lease until July 15, 2016 at which time the

tenant was required to vacate the rental unit. On June 30, 2016, the parties also entered into a mutual agreement to end the tenancy effective July 15, 2016. Both the tenant and the landlord signed the mutual agreement to end tenancy form. The landlord testified that the tenant paid a security deposit of \$390.50 at the start of the tenancy which the landlord continues to retain.

Analysis

Is the landlord entitled to an order of possession for breach of an agreement?

Pursuant to Section 44(b) of the Act, a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides the tenant will vacate the rental unit on the date specified as the end of the tenancy.

The agreement entered into and signed by both parties required the tenant to vacate the rental unit by July 15, 2016.

Further, pursuant to section 44(c) of the Act, a tenancy ends if the landlord and tenant agree in writing to end the tenancy. Pursuant to section 55(2)(d) of the Act, a landlord may request an order of possession of a rental unit if the landlord and tenant have agreed in writing that the tenancy has ended.

In addition to this tenancy being a fixed term tenancy which required the tenant to vacate the rental unit at the expiry of the fixed term, the tenant and landlord further agreed in writing that the tenancy would end on July 15, 2016. The landlord was entitled to possession of the rental unit effective this date.

The landlord is granted an Order of Possession pursuant to section 55 of the Act.

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss?

The landlord testified that since the filing of the application, the tenant had paid use & occupancy rent for the months of August and September 2016, reducing the landlord's monetary claim to \$390.50. The landlord submitted that this amount was for liquidated damages at set out in clause 1 of the tenancy agreement addendum. In the monetary order worksheet, the landlord identifies this claim as "landlord costs for admin, application and filing fee".

Clause 1 of the addendum refers to the security deposit being forfeited to the landlord as liquidated damages in the case of the tenant terminating the tenancy prior to the expiry of the fixed term or if the tenant is evicted for cause. I find this clause for liquidated damages does not apply to the case at hand as the tenancy was not ended for the reasons stipulated above.

This portion of the landlord's application is dismissed with the exception of the filing fee which is addressed below.

Is the landlord entitled to recover the filing fee for this application from the tenant?

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

The landlord continues to hold a security deposit of \$390.50. I allow the landlord to retain \$100.00 from the security deposit in full satisfaction of the monetary award pursuant to section 38 of the Act.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 13, 2016

Residential Tenancy Branch

