



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC, OPB, MNDC, FF

Introduction

The landlord has applied requesting an order of possession based on a one month Notice to end tenancy for cause issued on July 25, 2016; an order of possession based on a breach of the agreement, compensation for damage or loss under the Act and to recover the filing fee cost from the tenant.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. The tenant confirmed receipt of the landlords' 127 page submission given with the hearing documents. The tenant did not make a written submission.

Preliminary Matters

The landlord has applied requesting compensation in the sum of \$1,000.00 as the expected cost for painting the unit. I applied section 2.3 of the Residential Tenancy Rules of Procedure, which provides:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, as the claim for painting costs is not sufficiently related to ending the tenancy the monetary claim is dismissed with leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an order of possession based on a one month Notice to end tenancy for cause issued on July 25, 2016?

Background and Evidence

The landlord stated that a one month Notice to end tenancy for cause was served on the tenant indicating that the tenant was required to vacate the rental unit on August 31, 2016.

The reasons stated for the Notice to end tenancy were that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety or lawful interest of another occupant or the landlord;
- put the landlord's property at significant risk;
- caused extraordinary damage to the unit;
- tenant has not done required repairs of damage to the unit; and
- breached a material term of the tenancy that was not corrected within a reasonable time.

The landlord stated that the Notice was served to the tenant via registered mail sent on July 25, 2016. The Notice was also posted to the tenants' door on July 25, 2016.

The tenant confirmed that the landlord had placed the Notice on her door. A worker who assists the tenant took the Notice off the door. The tenant said she asked "her team" to fight the Notice. The tenant believes she received the Notice 1.5 to two months ago.

An application disputing the Notice was not filed.

Rent is due on the first day of each month. Rent is paid by direct deposit. The landlord has issued a letter to the tenant for each month since August 2016, informing the tenant that rent was accepted for use and occupancy only and that the landlord is pursuing an end to the tenancy. A copy of the letter for September 2016 rent was supplied as evidence. Each letter was posted to the tenants' door once the payment was deposited.

Analysis

Pursuant to section 90(c) of the Act, I find that the tenant received the Notice ending tenancy on the third day after it was posted to the tenants' door; July 28, 2016. The tenant could not recall the date the Notice was received; therefore I have applied the deemed service provision of the Act.

I find that the Notice is in the approved form and contains the correct effective date.

Section 47(5) of the Act provides:

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
- (b) must vacate the rental unit by that date.*

The tenant had 10 days to dispute the Notice; that did not occur. Therefore, pursuant to section 47(5) of the Act I find that the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice; August 31, 2016.

Therefore, I find that the tenancy has ended effective August 31, 2016 and that the tenant has been over-holding since that time. The landlord has issued receipts for rent

payments made and posted them to the door of the rental unit; informing the tenant that the tenancy has not been reinstated. Rent was accepted for use and occupancy only.

The landlord has been granted an order of possession that is effective two days after service to 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.

As the application has merit I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant.

Based on these determinations I grant the landlord a monetary order in the sum of \$100.00. 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.

Conclusion

The landlord is entitled to an order of possession.

The landlord is entitled to filing fee costs.

The claim for painting is dismissed with leave to reapply.

This decision is final and binding and 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, 2016

Residential Tenancy Branch