



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDC, MNR, FF and O

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

1. An Order of Possession pursuant to section 55;
2. A monetary order for unpaid rent and late fees pursuant to section 67; and
3. To recover the filing fee from the landlord for the cost of this application pursuant to section 72.

Both the tenant and the landlord's wife ("RS") appeared. RS stated that she had full authority to speak on behalf of her husband who was listed on the Residential Tenancy Agreement and named on the 2 Month to End Tenancy for Landlord's Use of Property ("2 Month Notice"), as well as on the Landlord's Application for Dispute Resolution ("Landlord's Application"). They were both given full opportunity to be heard, to present evidence and to make submissions. The landlord provided evidence that the 2 Month Notice was affixed to the door of the rental unit on September 1, 2016. The 2 Month Notice listed November 1, 2016 as being the date on which the tenant must move out. Section 90(d) of the *Act* deems that a document is served 3 days after it is affixed to a door or other place. Because of this, the corrected effective move-out date is November 30, 2016.

The tenant testified that she had received the Landlord's Application hearing package "some time at the end of November" by Regular Mail. I accept that the tenant was duly served with the landlord's 2 Month Notice and the Landlord's Application. The tenant explained that she understood what was at issue in the hearing, however, she stated that she did not understand that she had to submit a Tenant's Application for Dispute Resolution to challenge the 2 Month Notice that was issued in September 2016.

Issue(s) to be Decided

Should the landlord's application to end the tenancy on the basis of the 2 Month Notice be allowed? Should an Order of Possession be issued to the landlord?

Is the landlord entitled to a monetary award for unpaid rent and other items listed on the monetary order worksheet?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

Both the landlord and tenant agreed that the tenancy began on October 11, 2014. Rent was set at \$650.00 due on the 1st of the month. This was a month-to-month rental agreement and a security deposit of \$325.00 was collected at the start of the tenancy.

The landlord testified that the 2 Month Notice was issued because her father's 80 year old parents require their own space. Currently, they occupy the "upper" part of the house.

The tenant stated that she understood she needed to move, however, she explained that she was having some financial difficulties and had been having a hard time finding new accommodation. She said she had contacted three different apartment owners and received no return call from any of the properties. The tenant urged the landlord to give her more time to find an apartment and stressed that she would be homeless should she be forced to immediately vacate the property.

The landlord proposed allowing the tenant to have more time to find a new home and proposed a move out date of January 15, 2017. The landlord maintained that she wished to collect the outstanding rent due for October and December 2016. Furthermore, she sought to amend her monetary order to include rent due for the first two weeks of January 2017, the extra time she proposed giving the tenant.

The landlord has applied for a monetary order of \$1,650.00. Of this amount, \$1,300.00 was to recover unpaid rent for October and the tenant's overholding beyond November 30, 2016, the corrected effective date of the 2 Month Notice. Additionally, the landlord sought an order for \$350.00, funds that she had personally lent to the tenant to cover the expenses of a security deposit at another apartment. During the course of the hearing, the landlord stated that she would like to amend the monetary worksheet so that she is compensated for the additional two weeks of January 2017 that she has agreed the tenant may overhold in the unit.

Analysis – 2 Month Notice

As this was the landlord's unchallenged application, I refer to section 49 of the *Act*. The tenant testified that her father's parents were moving into the downstairs suite.

Subsection (3) states –

A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit

Subsection (1)(a) qualifies "close family member" as being an individual's;

Parent, spouse or child

The tenant has not made application pursuant to section 49(8) of the *Act* within fifteen days of receiving the 2 Month Notice to End Tenancy for Landlord's Use of Property. In accordance with section 49(9) of the *Act*, the tenant's failure to take this action within fifteen days led to the end of her tenancy on November 31, 2016 and required her to vacate the rental premises by that date. Since this notice was unchallenged and the reasons provided within the *Act* allow for the landlord's occupation of the rental unit, I find that the 2 Month Notice is valid and the landlord has a right to end the tenancy for the reasons provided. As the landlord has agreed to allow her to remain in the rental unit until January 15, 2017, the landlord will be given a formal Order of Possession effective as of that date. This order must be served on the tenant. If the tenant does not vacate the rental unit by January 15, 2017, the landlord may enforce this Order in the Supreme Court of British Columbia.

Analysis – Monetary Order

I find that the landlord is entitled to receive an order for unpaid rent in October and December 2016. The 2 Month Notice was issued on September 4, 2016 and possession of the rental unit was therefore to have transferred on November 30, 2016, the corrected effective date of the 2 Month Notice. As per section 51 of the *Act*, the tenant was entitled to receive an amount that is equivalent of one month's rent payable under the tenancy agreement. This will be credited in the form of 1 month's rent for November 2016. Due to the fact that the tenant has over-held their tenancy, the landlord is entitled to December's rent.

In accordance with sections 7(1) and 67 of the *Act*, I am issuing the attached monetary order that includes the landlord's application for \$650.00 in unpaid rent for October 2016.

Section 57 of the *Act* reads in part as follows:

(3) a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended

In accordance with sections 7(1) and 57(3) of the *Act*, I find that the landlord is also entitled to a monetary award of \$1,000.00, which is designed to compensate the landlord for the tenant's overholding in the rental unit from December 1, 2016 until January 15, 2017, the date that the Order of Possession takes effect.

Since the \$350.00 included on the Monetary Order Worksheet was a personal loan, I cannot consider its merits and dismiss that portion of the landlord's application

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.

Although the landlord's application does not seek to retain the security deposit for this tenancy, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's \$325.00 security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

The landlord is provided with a formal copy of an Order of Possession effective at 1:00 p.m. on January 15, 2017. Should the tenant 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 amount of \$1,425.00, in favour of the landlord under the following terms, which allows the landlord to recover unpaid rent, an amount for the tenant's overholding beyond the effective date of the 2 Month Notice, the filing fee and to retain the tenant's security deposit:

Item	Amount
Rental Arrears for October 2016	\$650.00
Overholding beyond end of Tenancy	1,000.00

Recovery of Filing Fee for this application	100.00
Less Security Deposit	-325.00
Total Monetary Award	\$1,425.00

The landlord is provided with formal Orders in the above terms. Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial 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: December 30, 2016

Residential Tenancy Branch