



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, MNR, FF

Introduction

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

- other remedies, identified as an order of possession based on a tenant's notice to end tenancy, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenant did not attend this hearing, which lasted approximately 18 minutes. The landlord and his English language translator, JRZ (collectively "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord provided a written authorization with his application and confirmed that his translator had authority to assist him at this hearing.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package on November 20, 2016, by way of registered mail to the rental unit. The landlord provided a Canada Post receipt and tracking number with this application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on November 25, 2016, five days after its registered mailing.

Preliminary Issues – Amendments to Landlord's Application

The landlord clarified that he applied for "other" remedies in his application because there was no checkbox on the Residential Tenancy Branch ("RTB") form to apply for an order of possession based on a tenant's notice to end tenancy. The landlord indicated in his written statement for the "details of the dispute" portion of his application that he was seeking an order of possession because the tenant provided him with written notice

to vacate the rental unit. Therefore, I heard the landlord's application regarding an order of possession because the tenant had notice of it by way of the landlord's application details.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's Application to increase the monetary claim to include December 2016 and January 2017 rent of \$800.00 for each month. The tenant is aware that rent is due on the first day of each month. The tenant continues to reside in the rental unit. The landlord applied for unpaid rent at this hearing. Therefore, the tenant knew or should have known that by failing to pay her rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claims for increased rent, despite the fact that she did not attend this hearing.

Issues to be Decided

Is the landlord entitled to an Order of Possession based on a tenant's notice to end tenancy?

Is the landlord entitled to a monetary award for unpaid rent?

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

Background and Evidence

The landlord testified regarding the following facts. This month-to-month tenancy began on July 1, 2016 when the landlord purchased the rental unit. The landlord said that the former owner of the unit told him that the tenant was already residing at the unit for approximately one year prior to his purchase. Monthly rent in the amount of \$800.00 is payable on the first day of each month. No security deposit was paid to the landlord and he said that the former owner told him that he did not receive a deposit from the tenant either. No written tenancy agreement was signed between the landlord and tenant, as only a verbal agreement was reached. The tenant continues to reside in the rental unit.

The landlord seeks an order of possession based on the tenant's written notice to end tenancy. The landlord said that the tenant provided him with a written letter, dated September 28, 2016, on the same date, stating that she would be ending her tenancy and vacating the rental unit by November 30, 2016. The letter was written on behalf of the tenant, by her Church. It is signed by the tenant and the secretary of the Church. It is addressed to the landlord. A copy of the letter was provided for this hearing.

The landlord seeks a monetary order of \$2,497.27 for unpaid rent as well as recovery of the \$100.00 filing fee. The landlord said that the tenant only paid rent of \$301.34 for October 2016 rent and provided a copy of a certified bank cheque from the tenant for the above amount. The landlord stated that the balance of rent due for October 2016 was \$498.66. The landlord claimed that the tenant only paid rent of \$401.39 for November 2016 and provided a copy of the rent cheque for the above amount. The landlord maintained that the balance of rent due for November 2016 was \$398.61. The landlord testified that the tenant did not pay rent of \$800.00 for each month from December 2016 to January 2017.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. Section 45(1) of the *Act* states that the tenant may end a tenancy by providing at least one month's written notice to the landlord on the day before rent is due, in compliance with section 52 of the *Act*. The tenant provided written notice to the landlord on September 28, 2016, before rent is due on October 1, 2016, to end the tenancy by November 30, 2016, which is more than one month's notice. The tenant's letter is dated, signed by the tenant, gives the address of the rental unit and provides the effective date of the notice, all in compliance with section 52 of the *Act*.

Therefore, I find that the tenant provided a notice to end her tenancy by November 30, 2016 and failed to abide by it. Residential Tenancy Policy Guideline 11 states that the tenant cannot unilaterally withdraw the notice to end tenancy, unless consent of the landlord was given, which was not the case here. Further, no issue of waiver of the notice arises since the tenant did not pay any rent after the effective date of the notice. I find that the landlord is entitled to a five (5) day Order of Possession, pursuant to section 55 of the *Act*. The landlord requested that the tenant be given five rather than two days to vacate the rental unit.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$2,497.27 from October 2017 to January 2017, inclusive. I find that the landlord is entitled to \$2,497.27 in unpaid rent from the tenant.

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

Conclusion

I grant an Order of Possession to the landlord effective **five (5) days after service on the tenant**. Should the tenant or anyone on the premises 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 landlord's favour in the amount of \$2,597.27 against the tenant. The tenant must be served with this Order as soon as possible. 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: January 03, 2017

Residential Tenancy Branch