



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MND, MNDC, MNSD, FF

Introduction

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

- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and 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 her filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the notice of hearing package via Canada Post Registered Mail on November 24, 2016. The landlord has provided a copy of the Canada Post Customer Receipt Tracking label as confirmation of service. The landlord provided undisputed affirmed evidence that an online search of the Canada Post Website shows that the packaged was "refused" by the recipient and returned to the landlord. Although the tenant did not receive the notice of hearing package, the tenant refused acceptance and I find that the tenant has been deemed served as per section 90 of the Act.

The landlord stated that the tenant was served with the amended monetary claim to the application in two ways. By posting to the rental unit door on December 21, 2016 and second by Canada Post Registered Mail on December 21, 2016. The landlord has provided the Canada Post Customer Receipt Tracking number as confirmation in her direct testimony. The landlord stated that an online search shows that attempted service was made twice with no success where a notice card was left for the tenant to collect the package. The package was deemed "unclaimed" by Canada Post and is in the process of being returned to the landlord. Although the tenant did not receive the amendment to the application for dispute, the tenant failed to claim the package from Canada Post and I find that the tenant has been deemed served as per section 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?

Is the landlord entitled to a monetary order for unpaid rent, for damage, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on July 22, 2016 on a fixed term tenancy ending on July 22, 2018 as shown by the submitted copy of the signed tenancy agreement dated July 21, 2016. The monthly rent is \$1,250.00 payable on the 1st day of each month and a security deposit of \$725.00 was paid on July 11, 2016. A condition inspection report for the move-in was completed by both parties on July 22, 2016.

The landlord seeks an order of possession for cause, an order of possession for unpaid rent, a monetary order for unpaid rent, for damage, for money owed or compensation of \$7,500.00.

On October 1, 2016, the landlord served the tenant with the 1 Month Notice. The 1 Month Notice sets out an effective end of tenancy date of November 1, 2016 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk; or
- the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
 - Jeopardize a lawful right or interest of another occupant or the landlord.
- the tenant has not done required repairs of damage to the unit/site.

In the details of cause noted on the notice it states,

Multiple noise complaints, safety of tenant, breaking tenancy agreement addendum.

The landlord stated the tenant or her guests were seen blocking common area exterior doors which left the property unsecured. The landlord also stated that numerous noise complaints were filed by other occupants noting that the tenant or her guests caused excessive noise at all hours of the day and night. The landlord has submitted in support of these claims 3 property management warning letters and 8 property management letters of imposed fines of \$200.00 each from the Strata Council.

The landlord also provided undisputed affirmed testimony that since the 1 Month Notice was served the landlord is not aware of any applications filed by the tenant to dispute the 1 Month Notice dated October 1, 2016.

The landlord also stated that the tenant was served with a 10 Day Notice dated November 22, 2016 which was served to the tenant on November 24, 2016 by posting it to the rental unit door. The 10 Day Notice states that the tenant failed to pay rent of \$650.00 that was due on November 22, 2016. The landlord noted that this was an error as the signed tenancy agreement clearly shows that rent was due on the 1st of each month. The landlord has provided a copy of a completed proof of service document which confirms that the 10 Day Notice was posted to the rental unit door with a witness on November 24, 2016. The 10 Day Notice sets out an effective end of tenancy date of December 6, 2016.

The landlord provided undisputed affirmed testimony that since the tenant was served with the 10 Day Notice no rent has been paid as of the date of this hearing.

The landlord also seeks a monetary claim of:

\$650.00	Unpaid Rent November 2016
\$1,250.00	Unpaid Rent December 2016
\$1,250.00	Unpaid Rent January 2017
\$1,600.00	Strata Council Bylaw Fines (\$200 each for 8 incidents)
\$700.00	Replace Entry Door
\$1,900.00	Replace Floor
\$150.00	Replace Ceiling

The landlord relies upon an email quote confirming the estimated cost of replacing the damaged areas. The landlord clarified that only the entry door was replaced, but that the tenant has refused access for the landlord to make repairs to the floor and ceiling.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

I accept the undisputed affirmed evidence of the landlord and find that the tenant was properly served with the 1 Month Notice dated October 1, 2016 by posting it to the rental unit door on October 1, 2016. The tenant is deemed served as per section 90 of the Act on October 1, 2016. I accept the undisputed affirmed evidence of the landlord and find pursuant to section 47 (5) the tenant having been served with the 1 Month Notice on October 1, 2016 has failed to apply for dispute resolution to dispute the 1 Month Notice within the allowed timeframe. The tenant is presumed to have conclusively accepted that the tenancy is at an end. As the effective date of the 1 Month Notice of November 1, 2016 has passed, I find that the landlord is entitled to a 2 day order of possession.

As for the 10 Day Notice dated November 22, 2016, I also find that the tenant was properly served with the 10 Day Notice by posting it to the rental unit door on November 24, 2016 based upon the undisputed affirmed evidence of the landlord. The tenant is deemed served as per section 90 of the Act on November 27, 2016. I accept the undisputed affirmed evidence of the landlord and find pursuant to section 46 (5) the tenant having been served with the 10 Day Notice on November 24, 2016 has failed to pay the rental arrears or apply for dispute resolution to dispute the 10 Day Notice within the allowed timeframe. The tenant is presumed to have conclusively accepted that the tenancy is at an end. As the effective date of the 10 Day Notice of December 6, 2016 has passed, I find that the landlord is entitled to a 2 day order of possession.

The landlord has established a claim under two different notices, I make one order for an order of possession to be effective 2 days after it is served upon the tenant.

As for the monetary claim, I accept the undisputed affirmed evidence of the landlord and find based upon the above noted that the landlord has established a claim for unpaid rent of \$3,150.00. I also find that the landlord has established a monetary claim for \$1,600.00 based upon the undisputed evidence of the landlord in the form of the 8 property management letters in noted strata fines caused by the tenant at \$200.00 per incident. I accept the landlord's undisputed evidence that the tenant caused damage to the entry door requiring replacement of the door at \$700.00 based upon the email quote.

I decline at this time to make any order regarding the landlord's monetary claim for replacement of the floors and ceiling. As noted by the landlord, no work has yet been performed as the tenant has refused entry to the rental. I find that as no work has replaced the floor or ceiling that this portion of the landlord's claim is premature. These portions of the landlord's claim are dismissed with leave to reapply.

The landlord has established a total monetary claim of \$5,450.00.

The landlord having been successful in the application is entitled to recovery of the \$100.00 filing fee.

I order that the landlord may retain the \$725.00 security deposit in partial satisfaction of the claim and grant the landlord a monetary order for \$4,825.00.

Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$4,825.00.

These orders must be served upon the tenant. Should the tenant fail to comply with the order of possession, the landlord may file the order with the Supreme Court of British Columbia and enforced as an order of that Court. Should the tenant fail to comply with the monetary order, the landlord may file the order with 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 04, 2017

Residential Tenancy Branch