



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNSD, MNDC, FF

Introduction

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter. This hearing dealt with the landlord's application for:

- an Order of Possession pursuant to section 55 of the *Act* for Cause;
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent and utilities, and money owed for loss under the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

While the landlord attended the hearing by way of a conference call, the tenants did not. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave sworn testimony that a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") was served on the tenants in person on November 1, 2016. I find that in accordance with section 88 of the *Act*, the 1 Month Notice was served on the tenants on November 1, 2016.

The landlord gave sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities ("10 Day Notice") was sent to the tenants by way of Registered Mail on December 21, 2016. I find that in accordance with sections 88 and 90 of the *Act* the 10 Day Notice was served to the tenant on December 26, 2016.

The landlord testified that the tenants were both identified on the mailed copy of the Landlord's Application for Dispute Resolution hearing package ("dispute resolution hearing package") sent by way of Registered Mail on December 21, 2016. In accordance with section 89(1)(a) and 90 of the *Act*, I find that the tenants were served with the landlord's dispute resolution hearing package on December 26, 2016. A copy of the 10 Day Notice, 1 Month Notice, Canada Post Tracking Numbers and a Monetary

Order Worksheet were all provided to the hearing in the Landlord's Application for Dispute Resolution ("Landlord's Application").

The landlord stated at the outset of the hearing that she wished to amend her Monetary Order to \$4,919.31, to include \$1,900.00 in unpaid rent for January 2017.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's Application to increase the monetary claim for January 2017 rent by \$1,900.00 to \$4,919.31. The tenants are aware that rent is due on the first day of each month. The tenants continue to reside in the rental unit; therefore, the tenants who were served with the landlord's Monetary Order pursuant to section 88 of the *Act*, knew or should have known that by failing to pay their rent, the landlord could pursue all unpaid rent at this hearing. For the above reasons, I find that the tenants had appropriate notice of the landlord's claims for increased rent, despite the fact that they did not attend this hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order for unpaid rent?

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

Is the landlord entitled to apply the security deposit against the Monetary Order?

Background and Evidence

The landlord gave evidence that the tenancy agreement in question began on September 26, 2016. This was a month to month tenancy; rent was set at \$1,900.00 per month. A security deposit of \$950.00 was provided to the landlord at the outset of the tenancy; however, the landlord testified that she has since learned that this was an invalid cheque and was dishonoured by the bank. The landlord provided documentary evidence from the bank manager stating that the account on which the cheque was written did not exist.

The landlord has applied pursuant to section 47 of the *Act* for an Order of Possession for Cause. The landlord stated that she was concerned about the constant complaints she had received from her neighbours concerning the tenants. The landlord explained that the neighbours have contacted her concerning alarming behaviour coming from the property and the continued disturbances they have caused in the neighbourhood. On

her 1 Month Notice served to the tenants on November 1, 2016, the landlord failed to cite a reason for Cause. Furthermore, the bottom of her 1 Month Notice reads “need property for personal use.”

On January 12, 2017, an arbitrator ruled that the tenants’ application to cancel this 1 month notice was valid as the landlord 1 Month Notice did not comply with section 52 of the *Act*.

The landlord did not apply for an Order of Possession for non-payment of rent for the months of December 2016 and January 2017. The Landlord’s Application for Dispute Resolution does not indicate this is a reason for ending this tenancy and obtaining an Order of Possession. The landlord has, however, included a Monetary Order Worksheet seeking to recover \$3,019.31 for monies owed from non-payment of rent and utilities for these months:

| Item | Amount |
|------------------------------------|------------|
| Unpaid rent for December 2016 | \$1,900.00 |
| Unpaid utilities for November 2016 | 65.49 |
| Unpaid Gas bill for October 2016 | 103.82 |
| Damage Deposit | 950.00 |
| | |
| Total = | \$3,019.31 |

The landlord indicated that she hoped to get an Order of Possession pursuant to section 46 of the *Act*. The landlord has however, failed to indicate on the Landlord’s Application for Dispute Resolution Package served on the tenant that she was seeking this relief. The landlord has only marked the section of the document related to the issue of cause as a reason for ending the tenancy.

Analysis – Order of Possession

The legal principle of *res judicata* prevents a plaintiff from pursuing a claim that already has been decided and also prevents a defendant from raising any new defense to defeat the enforcement of an earlier judgment. It also precludes re-litigation of any issue, regardless of whether the second action is on the same claim as the first one, if that particular issue actually was contested and decided in the first action.

The previous arbitrator ruled that the 1 Month Notice issued on November 1, 2016 was invalid pursuant to section 52 of the *Act*. The landlord has now applied to enforce this

same notice, but under different reasons for Cause. I therefore find that this current application is *res judicata*, meaning the matter has already been conclusively decided and cannot be decided again.

I make no finding with respect to the landlord's 10 Day Notice, as no application for an Order of Possession on the basis of that Notice is properly before me.

Analysis – Monetary Order

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove her entitlement to her claim for a monetary award.

I accept this uncontested evidence offered by the landlord. The landlord produced in the evidentiary package, copies of unpaid invoices for both the utilities and gas providers. As well, she testified that rent has not been paid for December 2016 and January 2017. Pursuant to sections 64(3)(c) and 67 of the *Act*, I allow the landlord's undisputed application for a monetary award of \$4,019.31, which also includes unpaid January 2017 rent.

As the landlord was partially successful in her application, she may recover the \$100.00 of the filing fee from the tenants pursuant to section 72 of the *Act*.

Conclusion

I am unable to consider the landlord's application for an Order of Possession pursuant to section 47 of the *Act*, as this matter has already been subject to a final and binding decision of another arbitrator appointed under the *Act* on January 12, 2017

The landlord remains at liberty to apply for an Order of Possession with respect to the 10 Day Notice of December 21, 2016.

I issue a Monetary Order of \$4,069.31 in favour of the landlords under the following terms:

| Item | Amount |
|------------------------------------|------------|
| Unpaid rent for December 2016 | \$1,900.00 |
| Unpaid rent for January 2017 | 1,900.00 |
| Unpaid utilities for November 2016 | 65.49 |
| Unpaid Gas bill for October 2016 | 103.82 |
| Recovery of Filing Fee | 100.00 |
| | |
| Total = | \$4,069.31 |

The landlord is provided with formal Orders in the above terms. Should the tenant fail to comply with the Monetary Order, the Order may be filed and enforced as an Order 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: January 25, 2017

Residential Tenancy Branch