



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC MNDC 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;
- and a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

While the landlord's agent attended the hearing by way of conference call, the tenant did not. I waited until 11:15 a.m. to enable the tenant to participate in this hearing scheduled for 11:00 a.m. The landlord's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the dispute resolution proceeding The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The landlord's agent gave sworn testimony that on December 22, 2016 a copy of the Application for Dispute Resolution hearing package as well as the evidentiary package was served on the tenant by way of Registered Mail. Canada Post tracking numbers were provided to the hearing to confirm this registered mailing. Pursuant to sections 88, 89 and 90 of the *Act*, the tenant was deemed served with the dispute resolution hearing package on December 27, 2016.

The landlord's agent provided undisputed testimony that the tenant was served with the landlord's 1 Month Notice to End Tenancy For Cause ('1 Month Notice'), with an effective date of December 31, 2016, on November 22, 2016, by way of posting to the rental unit door as well as by registered mail. The landlord provided Canada Post tracking numbers in their evidence package. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 1 Month Notice on November 27, 2016, five days after its mailing.

Issues to be Decided

Is the landlord entitled to an Order of Possession for cause?

Is the landlord entitled to a Monetary Order for compensation and / or money owed by the tenant?

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

Background and Evidence

The landlord's agent provided undisputed testimony that this month to month tenancy began in June 2016. The current rental amount is \$1,025.00 due on the first of each month. The landlord currently holds a security deposit in the amount of \$500.00, and the tenant continues to reside in the rental unit.

The landlord submitted the notice to end tenancy providing four grounds:

1. the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
3. the tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant; and
4. the tenant has engaged in illegal activity that has, or is likely to, jeopardize the lawful right or interest of another occupant or the landlord.

The landlord's agent testified that the rental building was a non-smoking one, and the bylaws prohibit smoking anywhere on the strata property, including inside the building. The landlord is seeking an end of this tenancy as the tenant has been "smoking nonstop", which has resulted in a loss of one tenant as the smoke travels to other units. The landlord submitted that the tenant has a total disregard for the bylaws and her neighbours.

The landlord submitted, in their evidence package, a copy of the strata bylaws which state "Effective January 28, 2015, smoking is not permitted in any of the indoor / outdoor common areas and limited common areas, including the elevators, lobbies, stairwells, patios and balconies. Smoking of pipes, cigarettes or any smoking product is not permitted in any of these areas". The landlord also submitted, in their evidence, copies of the infraction letters sent to the tenant dated August 15, 2016, August 23, 2016, and August 25, 2016 in response to complaints to the strata from other residents who reside in the building. The tenant was subsequently fined by the strata for these infractions which state that the tenant continuously smokes on her balcony and allows the smoke to rise to neighbouring units. The three infractions resulted in a fine of \$200.00 per offence, for a total of \$600.00. The tenant was sent a letter dated September 29, 2016 notifying her of the outstanding fines, which was to be paid on or before October 15, 2016.

The landlord is seeking an Order of Possession for Cause, as well as a Monetary Order in compensation for the \$600.00 in fines levied by the strata corporation and \$100.00 for the recovery of the filing fee.

Analysis

Based on undisputed testimony of the landlord, I find that the tenant was served with the Notice to End Tenancy, and I find that the 1 Month Notice does comply with the form and content provisions of section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant has failed to file his application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 1 Month Notice, December 31, 2016.

In this case, this required the tenant and anyone on the premises to vacate the premises by December 31, 2016. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*.

I accept the landlord's testimony and evidence that the tenant has incurred \$600.00 in fines as a result of her actions. Accordingly, I allow the landlord's application for a Monetary Order in the amount of \$600.00 in compensation for the fines levied by the strata for the tenant's actions.

The landlord continues to hold the tenant's security deposit of \$500.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit of \$500.00 plus applicable interest in partial satisfaction of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit.

As the landlord was successful in their application, I also allow the landlord to recover the filing fee for this application.

Conclusion

I find that the landlord's 1 Month Notice is valid and effective as of December 31, 2016. I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. 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 order the landlord to retain the tenant's security deposit of \$500.00 in partial satisfaction of the monetary claim.

I issue a \$200.00 Monetary Order in favour of the landlord under the following terms, which allows the landlord to recover the cost of the fines incurred by the tenant, recovery of the filing fee for this application, while allowing the landlord to retain the tenant's security deposit:

Item	Cost
Recovery of the fines incurred by the tenant	\$600.00
Recovery of Filing Fee	100.00
Less security deposit	-500.00
Total Monetary Award	\$200.00

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: February 22, 2017

Residential Tenancy Branch