



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, OPC, MNR, 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 and breach of a material term of the tenancy pursuant to section 55;
- a monetary order for unpaid rent 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 his filing fee for this application from the tenant pursuant to section 72.

The landlord and his agent (the landlord) attended the hearing via conference call and provided affirmed testimony. The tenant attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlord served the tenant with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on January 9, 2017. Both parties also confirmed that the landlord served the tenant with the supplemental documentary evidence package on January 10, 2017 by posting it to the rental unit door. The tenant confirmed that no documentary evidence was submitted for the hearing. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

At the end of the hearing the tenant stated that as she is in the process of moving that she does not have a current mailing address that she would accept service of the decision and any documents at her mother's residence. As such, the Residential Tenancy Branch File shall be updated with her mother's mailing address.

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, 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 August 1, 2016 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated August 1, 2016. The monthly rent is \$950.00 payable on the 1st day of each month and a security deposit of \$475.00 was paid on August 1, 2016.

The landlord seeks an order of possession and a monetary order for unpaid rent for \$1,950.00.

On November 14, 2016, the landlord served the tenant with the 1 Month Notice dated November 14, 2016 in person. The 1 Month Notice sets out an effective end of tenancy date of December 14, 2016 and that it was being given as:

- the tenant is repeatedly late paying rent;
- the tenant has allowed an unreasonable number of occupants in the unit;

A review of the signed tenancy agreement shows that monthly rent is payable on the 1st day of each month and as such the effective end of tenancy date is corrected to December 31, 2016.

The landlord claims that the tenant failed to pay rent for:

\$50.00	November 2016
\$950.00	December 2016
\$950.00	January 2017

The tenant disputes the landlord's claim stating that November 2016 rent was paid in full. Both parties agreed that the tenant pays rent in cash and that the landlord routinely does not issue a receipt for the rent payments to the tenant. The tenant stated that she still occupies the rental unit as of the date of this hearing, but is in the process of moving out by the end of the day (February 1, 2017). The tenant stated that the rent for December 2016 was refused by the landlord and that the January 2017 rent was not paid as well as payments are made by the ministry and the landlord refuses to confirm with the ministry that the tenant still occupies the rental unit.

Analysis

Section 63 of the Residential Tenancy Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the two parties during the hearing led to a resolution. Specifically, it was agreed as follows:

Both parties agreed to mutually end the tenancy on February 1, 2017, by which time the tenants will have vacated the rental unit by the end of the day.

The landlords agreed to withdraw the 1 Month Notice dated November 14, 2016.

Both parties agreed that the above noted particulars comprised a full and final settlement of all aspects of the dispute arising from this application for dispute resolution regarding possession of the rental unit.

In order to implement the above settlement reached between the parties, I issue an Order of Possession to be used by the landlord if the tenants fail to vacate the rental premises in accordance with their agreement. The effective date of the order of possession shall be February 2, 2017 at 1:00 pm. The landlord is provided with this order in the above terms and the tenant(s) must be served with this Order in the event that the tenant(s) do not vacate the premises by the time and date set out in their agreement. Should the tenants fail to comply with this Order, the Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

As for the monetary claim, I find based upon the affirmed testimony of both parties that the landlord has established a monetary claim of \$1,900.00 in unpaid rent for December 2016 and January 2017. Although the tenant claims that the landlord refused rent payment for December 2016 and that rent was not paid for January 2017, the tenant has acknowledged that she still occupies the rental unit and that the landlord is entitled to monthly rent of \$950.00 for each month. I also find that the landlord has failed to provide sufficient evidence of unpaid rent of \$50.00 for November 2016. This portion of the claim is disputed by the tenant. The landlord has acknowledged that the tenant

normally pays rent in cash and that the landlord has never issued any rent receipts for payments. The landlord has provided no evidence to support his claim of unpaid rent for November 2016 other than his direct testimony and written statement. As such, this portion of the landlord's claim is dismissed.

The landlord has established a monetary claim of \$1,900.00. In offsetting this claim, I authorize the landlord to retain the \$475.00 security deposit in partial satisfaction of the claim. The landlord is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted an order of possession for February 2, 2017 at 1:00 pm.
The landlord is granted a monetary order for \$1,525.00.

The tenant must be served with the above noted orders. Should the tenant fail to comply with the orders, the orders may be filed for enforcement in the Supreme Court of British Columbia for enforcement of the order of possession and in the Small Claims Division of the Provincial Court for enforcement of the monetary order.

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 01, 2017

Residential Tenancy Branch