



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPB, MND, MNDC, FF, CNC, OLC, RP

Introduction

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the “Act”).

The tenants seek:

- cancellation of the landlords’ 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order to the landlords to make repairs to the rental unit pursuant to section 33;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The landlords seek:

- an Order of Possession pursuant to section 55;
- a monetary order 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; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties 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 tenant AM confirmed he represented both tenants at the hearing (the “tenant”). The landlord, EJ primarily spoke for the landlords (the “landlord”) with the landlord SJ providing additional testimony.

As both parties were in attendance I confirmed that there were no issues with service of the landlord's 1 Month Notice, the parties' respective applications for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of each other's materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the Landlord's 1 Month Notice, the respective applications for dispute resolution and their respective evidentiary materials.

At the outset of the hearing, the tenant withdrew the portion of their application disputing the landlords' 1 Month Notice stating that they would vacate the rental unit by February 28, 2017, the effective date of the 1 Month Notice. As the other portions of the Tenants' application seek relief that pertain to an ongoing tenancy the tenant withdrew the remaining portions of their application.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for damage and loss arising out of this tenancy?

Are the landlords entitled to recover the filing fee for this application from the tenants?

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 landlords' claim and my findings around each are set out below.

The parties agreed on the following facts. This tenancy began on May 15, 2016. The monthly rent is \$2,200.00 payable on the first of the month. The tenants pay a portion of the monthly utility bills. A deposit of \$1,100.00 was paid by the tenants at the start of the tenancy and is still held by the landlords. The parties intend for this sum to represent both the security deposit and pet damage deposit.

The landlord testified that the rental unit was clean at the start of the tenancy. The landlord said that the walls were newly painted and the unit was odorless. The landlords submitted a condition inspection report completed by the parties at the start of the tenancy into evidence showing that there were no issues with the rental unit. The landlords submitted several email correspondences between the parties where the issue of marijuana smoke is brought up. The tenants were warned about instances where other tenants complain about the smell of marijuana smoke. The tenant testified that they took care to smoke outside the rental unit on the patio and denies that they

smoked within the rental unit. The landlord testified that because the tenants smoke marijuana inside the rental unit he expects that he will need to fully repaint the rental unit before new tenants can occupy the unit. The landlord estimates that the cost of fully repainting the rental unit will be \$1,100.00.

The landlord testified that he believes that an air purifier will need to be purchased and used to clean the rental unit. The landlord said that they do not have an air purifier and purchasing is the cheapest option. The landlords expect an air purifier to cost around \$300.00 and submitted print outs of websites selling air purifiers into written evidence.

The landlord testified that the tenants have refused to allow the landlords to show the rental unit to prospective renters and therefore, they have not been able to find new renters to occupy the rental unit after the current tenancy ends. The landlords submitted into written evidence an email exchange with the tenants dated January 27, 2017, where the tenants refused to allow the landlords to enter the rental unit. The tenant testified that they did refuse entry as they believed that the landlords were prohibited from entering the rental unit until this hearing resolved the parties' dispute. Both landlords testified that they do not expect that a new tenant can be found for the month of March and possibly April. Therefore the landlords seek a damage award for the equivalent of one month's rent, \$2,200.00.

The landlords suggest that a monetary award in the range of \$3,600.00 for their loss is appropriate under the circumstances, calculated by them as follows:

ITEM	Loss of Value
Loss of March 2017 Rent	\$2,200.00
Need to Repaint the Rental Unit	\$1,100.00
Need to Purchase Air Purifier to Clean Rental Unit	\$300.00
TOTAL	\$3,600.00

Analysis-Tenancy

Section 55(1) of the *Act* reads in part as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52..., and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice...

As the tenants have withdrawn their application to cancel the landlords' 1 Month Notice, and I am satisfied that the landlords' 1 Month Notice complies with the form and content requirements of section 52 of the *Act*, I issue a formal Order of Possession in the landlords' favour pursuant to section 55 with an effective date of February 28, 2017.

Analysis – Monetary Claim

Section 67 of the *Act* allows me to issue a monetary award for damage or loss. 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.

I find it premature to consider the issues of damages to the rental unit. The tenancy was ongoing as of the date of the hearing. The tenants have the right to make repairs themselves if there is damage to the rental unit beyond the reasonable wear and tear of occupancy. Accordingly, I dismiss the portion of the Landlord's application seeking a monetary award for damage to the rental unit with leave to reapply once the tenancy has ended.

Section 7(2) of the *Act* sets out the duty of a party claiming damages to take reasonable actions to minimize the loss:

- 7(2)** A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

If proper notice to enter the rental unit has been provided pursuant to section 29 of the *Act*, the tenants cannot refuse entry to the Landlords. I accept the evidence of the parties that the tenants interfered with the landlords' ability to show the rental unit to prospective tenants. The landlords testified that they expect they will not be able to find

a tenant for March and potentially April. Taking into consideration the date of this hearing and the current real estate conditions I do not find the landlords' position to be reasonable. The landlords have a duty to minimize their loss, in this case by re-renting the unit at a reasonable rate. Even if the landlords must perform some cleaning after the tenants vacate the rental unit I do not find it reasonable that a new tenant would not be found for over a month. The landlords are claiming the equivalent of a full month's rent. I find that the equivalent of a week's rent to be reasonable under the circumstances. Accordingly, I issue a monetary award to the landlords in the amount of \$550.00; any further consideration of loss of income is premature at this stage. Should the landlords suffer further losses arising out of this tenancy for either loss of rent or through damage to the rental unit, I grant them leave to reapply for those additional losses.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain \$550.00 from the tenants' \$1,100.00 security deposit in satisfaction of the monetary award issued in the landlords' favour.

I find that the landlords have only achieved partial success in their application. The landlords are issued an order of possession because the tenants withdrew their dispute of the landlords' 1 Month Notice. The tenant testified that they attempted to negotiate a settlement prior to the hearing but the landlords were unreceptive. On a balance of probabilities, the landlords have only been able to show a portion of the loss they are claiming. I find that the Landlords' application overestimated their losses. As the landlords have only been partially successful in their application, I decline to issue authorization to recover the filing fees of this application.

Conclusion

I grant an Order of Possession to the landlords effective **1:00pm February 28, 2017**. Should the tenants or any occupant 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 landlords' favour in the amount of \$550.00, which is to be implemented by the landlords' retention of this amount from the tenants' security deposit. I order that the value of the retained portion of the tenants' security deposit is decreased from \$1,100.00 to \$550.00.

I grant the landlords leave to reapply for further losses in rent they may incur and for damage to the rental unit that may become evident once this tenancy ends.

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: March 2, 2017

Residential Tenancy Branch

