



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR

Introduction

This hearing was scheduled to consider the landlords' 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 under the *Act*, regulation or tenancy agreement pursuant to section 67.

The tenant did not attend this hearing, which lasted approximately 20 minutes. The landlord, JM attended the hearing (the "landlord"), confirmed she had full authority to represent both landlords, and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that she personally served the tenant with a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") dated January 31, 2017 on that date. In accordance with section 88 of the *Act*, I find that the tenant was served with the 1 Month Notice on January 31, 2017.

The landlord testified that she served the landlord's application for dispute resolution dated March 20, 2017 on the tenant on March 24, 2017 by registered mail. She provided a Canada Post tracking number in support. I find that the tenant was deemed served with the application for dispute resolution in accordance with sections 89(2) and 90 of the *Act* on March 29, 2017 five days after mailing.

At the At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since the application was filed the interest has continued to accrue on the arrear amount and the total owing as of the date of the hearing is \$1,206.59. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure as I find that interest continuing to accrue can be reasonably anticipated, I amend the landlords' Application to increase the landlords' monetary claim from \$1,201.78 to \$1,206.59.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for cause?

Are the landlords entitled to a monetary award as claimed?

Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This month to month tenancy originally began in April, 2014. The current rent is \$1,200.00 payable on the 1st of the month. The tenant is also responsible for paying for the municipal utility services. A security deposit of \$600.00 was paid by the tenant at the start of the tenancy and still held by the landlord. The tenant continues to reside in the rental unit.

The landlord testified that the tenant is keeping animals in the rental unit contrary to the terms of the tenancy agreement. In addition, the landlord said that the tenant has been found smoking inside the rental unit further violating the terms of the tenancy agreement. The landlord said that the tenant was warned verbally and in writing about the breach of the material term of the tenancy agreement prior to issuing the 1 Month Notice.

The landlord testified that the tenant has failed to pay the municipal utilities as required under the tenancy agreement and the city has charged the landlord with the arrears. The landlord submitted into written evidence a copy of the Statement of Outstanding Taxes from the municipality dated January 31, 2017 showing a utility arrear of \$1,185.12 and interest on the arrear of \$16.66 for a total outstanding amount of \$1,201.78. The landlord testified that she has contacted the municipality and been informed that the total amount of arrear and interest as of the date of the hearing, April 26, 2017 is \$1,206.59.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend.

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within 10 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 an application for dispute resolution within the 10 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, February 28, 2017. Therefore, I find that the landlords are

entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 1 Month Notice has passed, I issue a 2 day Order of Possession.

I accept the landlords' undisputed evidence that the total amount of utility arrear and interest for this tenancy is \$1,206.59. I issue a monetary award in the landlords' favour for the amount of \$1,206.59 for utility arrears and interest as at April 26, 2017, the date of the hearing, pursuant to section 60 of the *Act*.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$600.00 security deposit in partial satisfaction of the monetary award issued in the landlords' favour.

Conclusion

I grant an Order of Possession to the landlords effective **2 days after service on the tenant**. Should the tenant 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 \$606.59 which represents the utility arrears and interest less the tenant's security deposit. 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: April 26, 2017

Residential Tenancy Branch