



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, OPC, OPB, MND, FF, MT, CNC, LRE,

Introduction

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

The landlord seeks:

- an Order of Possession pursuant to section 55;
- a Monetary Order for damages pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant seeks:

- more time to make an application to cancel the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- an order to suspend or set conditions on the landlord’s right to enter the rental unit and authorize the tenant to change the locks to the rental unit pursuant to section 70;

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were in attendance I confirmed that there were no issues with service of the landlord’s 1 Month Notice, either party’s application for dispute resolution or either party’s evidentiary materials. The tenant confirmed that he received the landlord’s 1 Month Notice dated February 23, 2017 on that date. The tenant testified that he filed his application for dispute resolution on March 22, 2017. The landlord testified that she filed her application for dispute resolution on April 5, 2017. The parties confirmed receipt of one another’s materials. In accordance with sections 88 and 89 of the *Act*, I

find that the tenant was duly served with a copy of the landlord's 1 Month Notice and both parties were duly served with the respective applications and their evidence.

Issue(s) to be Decided

Is the tenant entitled to an extension of time to file his application for dispute resolution? Should the 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Should conditions be set on the landlord's right to enter the rental unit?

Is the landlord entitled to monetary compensation as claimed?

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

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

The parties agreed on the following facts. This tenancy began in the autumn of 2016. The parties disagreed on whether the tenancy started in September or October. The monthly rent is \$1,200.00 payable on the first of each month. A security deposit of \$600.00 was provided by the tenant and is still held by the landlord. The tenant continues to reside in the rental building as of the date of the hearing.

Analysis

Section 66 of the *Act* provides that a time limit may be extended only in exceptional circumstances. Residential Tenancy Policy Guideline 36 provides further guidance and states that "exceptional implies that the reason for failing to do something at the time required is very strong and compelling". Furthermore, the reason for the request to extend a time period must be supported by "persuasive evidence to support the truthfulness of what is said".

I find that the tenant has not provided sufficient evidence to support the application for an extension of time to file a response to the landlord's 1 Month Notice. The tenant did not provide testimony or written evidence as to why he waited to file his application to dispute the 1 Month Notice for nearly a month after receiving it. I find that the tenant has not established that there are exceptional circumstances that would warrant an extension of time. Accordingly, I dismiss the tenant's application for more time to make an application to cancel the landlord's 1 Month Notice.

The tenant confirmed receipt of the 1 Month Notice on February 23, 2017. 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. As I have dismissed the tenant's application to extend the time period to dispute the notice to end tenancy, 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, March 31, 2017. Accordingly, I issue a formal Order of Possession in the landlord's favour pursuant to section 55. As the effective date of the 1 Month Notice has passed, I issue a 2 day Order of Possession.

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 is ongoing as of the date of the hearing. The tenant has 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.

As the landlord was primarily successful in her application she is entitled to recover the \$100.00 filing fee for her application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$100.00 from the tenant's \$600.00 security deposit in satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I grant an Order of Possession to the landlord 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 landlord's favour in the amount of \$100.00, which is to be implemented by the landlord's retention of this amount from the tenant's security deposit. I order that the value of the retained portion of the tenant's security deposit is decreased from \$600.00 to \$500.00.

I grant the landlord leave to reapply for further losses 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: April 27, 2017

Residential Tenancy Branch