



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPC MNR MND 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 pursuant to section 55; a monetary order for unpaid rent, damage or loss pursuant to section 67; authorization to retain the tenants' security deposit pursuant to section 38; and authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 11:20 am in order to enable the tenants to connect with this teleconference hearing scheduled for 11:00 am. The landlord/applicant attended this hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The landlord testified that she served the tenants personally with individual 1 Month Notices to End Tenancy ("1 Month Notice") on April 25, 2017. She submitted a copy of the proof of service form with witness information included. I find the tenants were each duly served with the landlord's 1 Month Notice on April 25, 2017. The landlord provided sworn undisputed testimony that she served the tenants personally with her Application for Dispute Resolution ("ADR") including the Notice of Hearing on May 4, 2017. The landlord described the details of this service: that she called the tenants to come to her apartment and handed them each a copy of the landlord's ADR package. I accept the undisputed testimony of the landlord and find that the tenants were duly served with individual copies of the landlord's ADR in accordance with section 89 of the Act.

Preliminary Matter: Monetary Issues dismissed with leave to reapply

The landlord testified that the tenants have not fully vacated the rental unit. She testified that while they moved many of their possessions out on June 5, 2017, they have left certain belongings in the rental unit. The landlord testified that the tenants told her she cannot have access to their rental unit and, in fact, the landlord testified that the tenants have changed the locks: the landlord does not have a key to the rental unit.

While the landlord submitted some photographic evidence of damage to the rental unit, she testified that she has not as of yet been able to conduct a condition inspect move-out report with

the tenants. Therefore, the landlord has been unable to assess any damage to the unit in full at this time. She testified that her \$6500.00 claim for damage is an estimate of the costs she will incur.

Given that the landlord's monetary application is based on speculation and is premature in that she has not yet conducted a move-out condition inspection report, I dismiss the landlord's application with respect to a monetary request for damages or loss and to retain the tenants' security deposit with leave to reapply. I will, however, consider the landlord's application for unpaid rent and the filing fee for this application.

Issue(s) to be Decided

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

Is the landlord entitled to a monetary order for unpaid rent?

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

Background and Evidence

This tenancy began on February 1, 2017. The landlord did not submit a copy of the tenancy agreement however she provided undisputed testimony that the written residential tenancy agreement outlines a month to month agreement with a rental amount of \$1200.00 payable on the first of each month. She testified that when a third occupant moved into the rental unit, the tenants and landlord agreed on a new monthly rental amount of \$1250.00. The landlord testified that she continues to hold the \$600.00 security deposit paid by the tenants on February 1, 2017.

The landlord submitted a copy of the 1 Month Notice issued to the tenants on May 4, 2017 citing several grounds including,

- *Tenant is repeatedly late paying rent;*
- *Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;*
- *Tenant has engaged in illegal activity that has damaged the landlord's property;*
- *Tenant has caused extraordinary damage to the unit or property; and*
- *Tenant has not done required repairs of damage to the unit.*

The landlord testified that the tenants did not pay rent of \$1250.00 due on April 1, 2017. The landlord testified that the tenants paid April rent on April 12, 2017. The landlord testified that the tenants did not pay rent for May 2017 although they continued to reside in the rental unit. The landlord testified that the tenants did not pay rent for June 2017 although they continued to live in the rental unit after June 1, 2017, still have personal belongings in the rental unit, changed the locks and verbally refused permission for the landlord to enter the rental unit.

The landlord also testified that she believes there was violence of some kind inside the rental unit. She submitted photographs from on a date in April 2017 when the tenants allowed the landlord into the rental unit. The landlord testified that there was blood on the walls. She took

photographs of damage to the doors and walls in the unit. She testified that she has not been able to access the rental unit to have contractors provide quotes for the repairs to be done to the rental unit.

The landlord applied for an Order of Possession as well as a monetary award of \$2500.00 for the months of May 2017 and June 2017 – the 2 months that remain unpaid by the tenants.

Analysis

The landlord has provided undisputed testimony that the tenants paid rent late in April 2017 as well as failing to pay rent for May 2017 and June 2017. She testified that the tenants have outstanding rental arrears in the amount of \$2500.00.

Based on the landlord's undisputed evidence, I am satisfied that the landlord had sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for cause: the tenants have failed to pay rent on time and in full in accordance with the Act.

Residential Tenancy Policy Guideline No. 38 provides that "a landlord may end a tenancy where the tenant is repeatedly late paying rent... Three late payments are the minimum number sufficient to justify a notice under these provisions". I find that the tenants are repeatedly late paying rent in the months of April, May and June 2017.

The tenants have not made application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice. In accordance with section 47(5) of the *Act*, the tenants' failure to take this action within ten days led to the end of their tenancy on the corrected effective date of the notice: June 4, 2017. As the tenants have not fully vacated the residence, I find that the landlord is entitled to a 2 day Order of Possession.

I find that the landlord is also entitled to receive an order for unpaid rent in May 2017 and June 2017. I accept this uncontested evidence offered by the landlord with respect to the outstanding rent. I accept the evidence of the landlord that the unit will require repairs and will likely not be re-rented for the month of June 2017. I am issuing the attached monetary order that includes the landlord's application for \$2500.00 in unpaid rent for May 2017 and June 2017.

As the landlord has not yet provided the tenants with opportunities for a condition inspection, I find that the landlord must address the security deposit pursuant to section 72 of the *Act*. However, as the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlord as follows:

| | |
|---|------------------|
| Rental Arrears for May & June 2017 (\$1250.00 x 2 = \$2500.00) | \$2500.00 |
| Recovery of Filing Fee for this application | 100.00 |
| Total Monetary Award | \$2600.00 |

The landlord is provided with this monetary Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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.

I dismiss the landlord's application for damage or loss as a result of this tenancy and to retain the tenants' security deposit with leave to reapply.

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: June 13, 2017

Residential Tenancy Branch