



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPL, CNL, MNDC

Introduction

This hearing dealt with applications from both the landlord and the tenant pursuant to the *Residential Tenancy Act* (the *Act*).

The landlord applies for:

- an Order of Possession for landlord's use of property pursuant to section 55.

The tenant applies for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49; and
- a monetary award for compensation for damage or loss pursuant to section 67.

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. The landlord was represented by her agent, SC (the "landlord").

As both parties were in attendance I confirmed that there were no issues with service of the landlord's 2 Month Notice, the tenant's application for dispute resolution, the landlord's application for dispute resolution or either party's evidentiary materials. 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 copies of the landlord's 2 Month Notice, the landlord's application and their evidentiary materials. I find that the landlord was served with the tenant's application and evidence in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing, the tenant made an application requesting to amend the monetary amount of the claim sought. The tenant indicated that he believes that the sum of \$19,500.00 better represents his claim than the original amount of \$6,120.00. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as recalculating a claim under the original heading could be reasonably anticipated, I amend the tenant's application to increase the monetary claim from \$6,120.00 to \$19,500.00.

Issue(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the tenant entitled to a monetary award as claimed?

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' claims and my findings around each are set forth below.

This tenancy began in 2008. The landlord issued the 2 Month Notice dated March 28, 2017 on that date. The tenant confirmed receipt of the 2 Month Notice. The tenant filed his application for dispute resolution on May 9, 2017.

The tenant testified that in recent years this tenancy has been characterized by constant harassment by the landlord. The tenant said that the previous hearings in regards to this tenancy, as listed on the first page of this decision, have been stressful and without merit. The tenant complained that he has not been able to enjoy the tenancy during the past year and has felt threatened by the landlord.

Analysis

Section 49(8) of the Act provides that a tenant may dispute a 2 Month Notice within 15 days after receiving the notice. The parties testified that the 2 Month Notice was served on March 28, 2017. The tenant filed his application for dispute resolution on May 9, 2017, over a month after the 2 Month Notice was first served. Accordingly, I find that the tenant is conclusively presumed under section 49(9) of the Act to have accepted that the tenancy ended on the effective date of the 2 Month Notices, May 31, 2017.

I find that the landlord's 2 Month Notice conforms to the form and content requirements of section 52 of the Act as it is signed and dated, provides the rental unit address, the effective date of the notice, states the grounds for ending the tenancy and is in the approved form. Therefore, pursuant to section 55 of the Act I issue an Order of Possession to the landlord. As the effective date of the 2 Month Notice has passed, I issue an order effective 2 days after service.

Section 67 of the Act allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement. 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 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. The claimant must also take reasonable steps to mitigate the damage or loss.

I find that there is insufficient evidence that there has been any loss or damage as a result of the landlord's actions. The tenant claims the amount of \$19,500.00 for "9 months of harassment and threatening, no quiet time, or peace of mind, and 6,000 thousand dollars for stress, and unable to enjoy the day". I find that the landlord's issuance of earlier Notices to End Tenancy and Applications for Dispute Resolution to be reasonable actions performed in accordance with the *Act*. While the tenant provided evidence of his frustrations I find that the subjective complaints are insufficient evidence of loss or damage. Furthermore, I find insufficient evidence to show that the landlord's actions were unwarranted or in violation of the *Act*, regulations or tenancy agreement.

The tenant characterized the landlord's testimony and behaviour at earlier hearings as harassment. I find the principle of *res judicata*, which provides that a final and binding decision of this Branch prevents further finding of fact involving the same claim, bars me from making a subsequent finding regarding earlier applications. Accordingly, I dismiss the tenant's claim.

Conclusion

I grant an Order of Possession to the landlords effective **2 days after service on the tenant**. Should the tenant or anyone 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.

The tenant's application is dismissed.

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