



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, O, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord; the tenant and her witness. I note that while the tenant had arranged for a witness to be available at the hearing she was not called to provide testimony.

I note that while the landlord had originally submitted her Application for Dispute Resolution seeking an order of possession based on a 1 Month Notice to End Tenancy for Cause and a monetary order in the amount of \$350.00 she later submitted an Amendment to an Application for Dispute Resolution form to increase her monetary claim to \$1,100.00 and also seek an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent.

The tenant submitted that she had filed an Application for Dispute Resolution seeking to cancel both Notices (to End Tenancy) as well as a monetary claim that is scheduled to be heard on July 18, 2017 (file number noted on the cover of this decision). I have confirmed that this Application for Dispute Resolution was made by the tenant on June 15, 2017. As a result, it was too late to cross the Applications of the tenant with this hearing that had already been scheduled to be heard based on the landlord's Application.

As the primary matters in both Applications are related to possession of the rental unit and as the tenant did not apply to dispute either Notice to End Tenancy until after their respective effective dates, I find adjourning the landlord's Application to be heard with the tenant's on July 18, 2017 is prejudicial to the landlord. As such, I find that the landlord's Application would proceed at this hearing and deal with the matters of possession and the landlord's monetary claim.

I note that since the tenant's Application scheduled to be heard on July 18, 2017 seeks both to cancel the Notices (to End Tenancy) and compensation there is no need for the tenant to withdraw her Application. While the matter of possession is dealt with in this hearing the tenant may still pursue her claim for compensation as part of the next hearing.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; and/or for cause; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute

Resolution, pursuant to Sections 38, 46, 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began on February 1, 2017 on a month to month basis for a monthly rent of \$750.00 due on the last day of the month prior to the subject month with a security deposit of \$350.00 paid.

The parties agreed the landlord issued to the tenant a 1 Month Notice to End Tenancy and a 10 Day Notice to End Tenancy for Unpaid Rent. I note the 1 Month Notice was issued on March 7, 2017 with an effective vacancy date of April 30, 2017 citing the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; that the tenant has engaged in an illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord and there has been a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord also submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on May 23, 2017 with an effective vacancy date of June 2, 2017 due to \$500.00 in unpaid rent due on May 1, 2017.

The tenant submitted that she had not been able to submit her Application for Dispute Resolution until June 15, 2017 because she has been assisting with care for her mother who is significantly ill and dying. She also submits that while she had contacted the Residential Tenancy Branch and obtained excellent advice she was not told by the Information Officer that she should file an Application to dispute the Notices that she had received or that there was a time limit if she wanted to have her Application crossed with the landlords.

The landlord seeks a monetary order for unpaid rent. Originally the landlord testified that she was seeking \$350.00 in unpaid rent for the month of April 2017 and \$750.00 in unpaid rent for the month May 2017. The tenant testified that she agreed she owed the landlord rent for the month of June 2017 but nothing is owed for April or May 2017.

After hearing the tenant's testimony the landlord corrected that her claim is for \$350.00 for the month of May 2017 and \$750.00 for the month of June 2017. The landlord stated that it is her practice to issue receipts to the tenant because her payments were in cash. The landlord submitted into evidence only one rent receipt dated May 5, 2017 for the amount of \$300.00

The tenant submitted that since March 31, 2017 she has made the following rental payments to the landlord:

Date Paid	Rental Period	Amount
March 31, 2017	April 2017	\$725.00
April 9, 2017	May 2017	\$100.00
April 16, 2017	May 2017	\$250.00
April 23, 2017	May 2017	\$100.00
April 30, 2017	May 2017	\$300.00
May 4, 2017	June 2017	\$50.00

The landlord read from her receipt book stating she issued the following rent receipts to the tenant:

Date of Receipt	Amount
February 1, 2017	\$750.00
March 1, 2017	\$750.00
April 29, 2017	\$50.00
May 5, 2017	\$300.00

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has
 - i. Put the landlord's property at significant risk;
- b) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - i. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
- c) The tenant
 - i. Has failed to comply with a material term, and
 - ii. Has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Section 47(4) allows a tenant who receives a notice under Section 47 to apply to dispute the notice within 10 days of receiving it. Section 47(5) states that if a tenant does not file an Application for Dispute Resolution seeking to cancel such a notice the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the unit by the effective date of the notice.

Section 66 of the *Act* states the director may extend a time limit established under the *Act* only in exceptional circumstances. Residential Tenancy Policy Guideline #36 states that "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend the time limit. The Guideline goes on to say that exceptional implies that the reason for failing to do something at the time required is very strong and compelling.

Section 66(3) states the director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

As the 1 Month Notice to End Tenancy for Cause issued on March 7, 2017 was received by the tenant on that dated and had an effective date of April 30, 2017 the tenant would have been required to file her Application for Dispute Resolution to dispute the Notice no later than March 17, 2017 to comply with Section 47(4).

While I accept that the tenant has been dealing with significant issues outside of her tenancy that may have warranted an extension of time to submit her Application to dispute the 1 Month Notice. However, if she intended to do so she was required, pursuant to Section 66(3) to file that Application prior to the effective date of the notice – April 30, 2017.

As noted above, the tenant did not submit her Application to dispute the 1 Month Notice until June 15, 2017 or 1 ½ months after the effective date of the Notice. As a result, I find that tenant failed to file her Application for Dispute Resolution before the effective date of the Notice.

As a result, and pursuant to Section 47(5) the tenant is deemed to have accepted the end of the tenancy as per the 1 Month Notice to End Tenancy for Cause issued on March 7, 2017 and she must vacate the rental unit.

As I have determined the tenant must vacate the rental unit based on the 1 Month Notice to End Tenancy, I make no findings of fact or law in relation to the 10 Day Notice to End Tenancy for Unpaid Rent.

As to the landlord's claim for unpaid rent, I accept, based on the tenant's agreement that rent for the month of June 2017 in the amount of \$750.00 has not been paid by the tenant.

There is a general legal principle that places the burden of proving a loss on the person who is claiming compensation for the loss. In regard to the landlord's claim for rent in the amount of \$350.00 for the month of May 2017 and considering the tenant's testimony that she paid the landlord an overage for rent for that month, the burden of proving that rent was not paid in cash, as claimed by the tenant, rests with the landlord.

Section 26(2) of the *Act* stipulates that a landlord must provide a receipt when rent is paid by cash. Cash receipts can help to establish when a rent payment has *not* been made.

When a landlord regularly provides receipts for cash payments there is an expectation that a tenant will be able to produce a receipt for every cash payment that has allegedly been made. When a tenant is unable to provide a receipt for an alleged payment, it lends credibility to a landlord's claim that a cash payment has not been made.

When a tenant has previously made cash payments and has never been provided with a receipt, there is no expectation that the tenant can provide a receipt for such a payment. In these circumstances the landlord's failure to provide receipts for cash payments made during this tenancy can significantly impair her ability to prove that the tenant did not pay a portion of rent.

In the case before me, I find that landlord's testimony was inconsistent and therefore unreliable. First she stated that the unpaid amount of rent was for the months of April and May which she later changed to be May and June.

In addition, the landlord testified she wrote receipts for rent since the start of the tenancy in amounts totaling \$1,850.00. As the tenancy began in February 2017 at the time of the hearing the landlord should have received 5 months' worth of rent totaling \$3,750.00. If she received payments only totaling \$1,850.00 then the amount outstanding would be \$1,900.00 and yet she claims only \$1,100.00.

As a result, I find the landlord has failed to establish that the tenant owes her any more rent than what the tenant has agreed to or \$750.00 for the month of June 2017.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$775.00** comprised of \$750.00 rent owed and \$25.00 of the \$100.00 fee paid by the landlord for this application, as she was only partially successful.

I order the landlord may deduct the security deposit and interest held in the amount of \$350.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$425.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: June 28, 2017

Residential Tenancy Branch