



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MND, MNDC, FF, O

Introduction

This hearing was convened by way of conference call in response to the Landlord's Application for Dispute Resolution (the "Application") requesting an Order of Possession due to a breach of a fixed term tenancy agreement. The Landlord also applied for a Monetary Order for: damage to the rental unit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; for "Other" issues; and to recover the filing fee from the Tenant.

The Landlord appeared for the hearing and provided affirmed testimony as well as documentary evidence in advance of the hearing. However, there was no appearance or any submission of evidence from the Tenant for the 20 minute hearing. Therefore, I turned my mind to the service of documents for this hearing by the Landlord.

The Landlord testified the Tenant was personally served with a copy of the Application and the Hearing Package on May 17, 2017. The Landlord testified that the Tenant signed his copy of the Application (page 1) to confirm her acceptance of the documents to verify this method of service. Based on the undisputed evidence before me, I find the Landlord served the Tenant pursuant to Section 89(1) (a) of the Act.

At the start of the hearing, the Landlord was asked to clarify his monetary claim and what it comprised of as there was no information provided regarding damage to the rental unit and for the "other" issues. The Landlord clarified that the only amount he was seeking in this hearing was June 2017 unpaid rent and that he wanted to use the Tenant's security deposit to offset against these rental arrears. As a result, pursuant to my authority under Section 64(3) (c) of the Act, I amended the Landlord's Application for unpaid rent and to keep the Tenant's security deposit and I dismissed the Landlord's claim for damages to the rental unit and "other" issues with leave to re-apply.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for a breach of the tenancy agreement?
- Is the Landlord entitled to a Monetary Order for June 2017 unpaid rent?

Background and Evidence

The Landlord testified that this tenancy started on January 27, 2017. A signed tenancy agreement submitted into evidence shows that the term of the tenancy was fixed for four months and set to expire on May 31, 2017. The tenancy agreement states that after the fixed term period, the tenancy ends and the Tenant is required to vacate the rental unit.

The rent payable is \$1,550.00 which is due on the last day of each month for the following month. The Tenant paid a security deposit of 900.00 on January 29, 2017 which is held in trust by the Landlord.

The Landlord testified that on April 30, 2017 the Tenant failed to pay rent for May 2017. As a result, the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") on May 10, 2017. The 10 Day Notice has a vacancy date of May 1, 2017.

The Landlord testified that the Tenant paid the full rent for May 2017 on May 23, 2017. However, the Tenant has now failed to move out of the rental unit pursuant to the signed tenancy agreement which ended the tenancy on May 31, 2017.

The Landlord confirmed that the tenancy agreement was not extended by any mutual agreement by the parties and that the Tenant is now over holding the tenancy for which he seeks an Order of Possession for. The Landlord testified that the Tenant has also failed to pay any rent for June 2017 and therefore he seeks June 2017 rent for the illegal occupancy by the Tenant in the amount of \$1,550.00.

Analysis

Section 44 of the Act stipulates how a tenancy ends. In particular, Section 44 (1) (b) of the Act states that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy.

Based on the undisputed evidence before me, I find the tenancy agreement entered into by the parties stipulated that the tenancy was to end on May 31, 2017 and the Tenant was required to move out and provide the Landlord with vacant possession of the rental unit on this date. However, the evidence before me is that the Tenant continues to occupy the rental unit without paying rent for the use and occupancy of the rental unit.

Section 55(2) (c) of the Act states that a landlord may request an Order of Possession of rental unit if the tenancy agreement is a fixed term tenancy that provides the tenant will vacate the rental unit at the end of the fixed term. Based on the foregoing, I find the Tenant has breached

the written tenancy agreement by over holding the tenancy past May 2017. Therefore, the Landlord is entitled to an Order of Possession.

As the Tenant is over holding the tenancy and is in rental arrears, the Landlord is entitled to a two day Order of Possession. This order must be served to the Tenant and may then be filed and enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit voluntarily.

I also award the Landlord unpaid rent for June 2017 in the amount of \$1,550.00 claimed. As the Landlord has been successful in the Application, the Landlord is also entitled to recover from the Tenant the \$100.00 filing fee, pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$1,650.00.

As the Landlord already holds the Tenant's \$900.00 security deposit, pursuant to Section 72(2) (b) of the Act, I order the Landlord to retain this amount in partial satisfaction of the claim awarded. The Landlord is issued with a Monetary Order for the outstanding balance of \$750.00.

This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court. Copies of the above orders are attached to the Landlord's copy of this Decision. The Tenant may also be held liable for any enforcement costs incurred by the Landlord.

Conclusion

The Tenant has breached the tenancy agreement by over holding the tenancy and not paying rent. Therefore, the Landlord is granted a two day Order of Possession.

The Landlord may keep the Tenant's security deposit and is issued with a Monetary Order for the remaining balance of unpaid rent and the filing fee of \$750.00.

The Landlord's monetary claim for damages to the rental unit and for "other" issues is dismissed with leave to re-apply.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act

Dated: June 28, 2017

Residential Tenancy Branch

