



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNDC, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act (the “Act”) for:

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

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As both parties were in attendance I confirmed that there were no issues with service of the landlord’s 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”), the landlord’s application for dispute resolution, the landlord’s amendment to the application for dispute resolution or any evidentiary materials from the parties. The tenant confirmed receipt of all of the landlord’s materials. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the 1 Month Notice, the landlord’s application for dispute resolution, the amendment to the application and the evidentiary materials. The tenant confirmed that she had not served the landlord with any other materials.

Issue(s) to be Decided

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

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the cost of 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 tenant’s claim and my findings around each are set out below.

The parties agreed on the following facts. This tenancy began in September, 2016. The current monthly rent is \$1,180.00. A security deposit of \$580.00 was paid at the start of the tenancy and is still held by the landlord. The rental unit is the basement suite of a detached home. The landlord's family occupies the main floor of the rental building.

There was an earlier hearing in regards to this tenancy under the file number on the first page of this decision. The tenant believed that the decision issued in the earlier hearing cancelled the landlord's 1 Month Notice.

The landlord testified that the 1 Month Notice was issued as the tenant had too many people residing in the rental unit as her son was not listed on the tenancy agreement. The landlord said this was a breach of a material term of the tenancy agreement. The landlord also said that the tenant keeps the rental unit in poor condition attracting vermin and allowing them to thrive. The landlord testified that the tenant brought a large trampoline which she keeps on the common lawn area, destroying the grass.

The landlord makes a claim under the following heads:

Item	Amount
Pest Control	\$700.00
Trampoline Storage	\$1,599.00
Loss of Income	\$2,560.00
Medication	\$42.22
Cleaning	\$180.00
Gate Repair	\$90.00
General Damages	\$30,000.00
TOTAL	\$35,171.00

The landlord testified that the rental unit has been kept in a state of disrepair and as a result vermin have been attracted to the rental building. The landlord said that rodents reside throughout the rental building and the tenant does not maintain her unit in a reasonable standard of cleanliness. The landlord said that he has contacted pest control companies to deal with the issue but he has been told that the rodents will return so long as they have access to food in the rental unit.

The landlord testified that there was an altercation with the tenant on May 25, 2017 where the police were called on the scene. The parties have differing accounts of the specifics of the incident. The landlord testified that the incident gave rise to a panic attack and has exacerbated dormant symptoms of PTSD. The landlord said that he has incurred costs for medication and loss of income as a result of the stress caused by the tenant. The landlord also estimates that the altercation with the tenant caused him discomfort that is the equivalent of \$30,000.00.

The landlord said that the tenant should be charged for keeping a trampoline on the common area during the course of the tenancy. The landlord calculates the cost of storage based on the size of the trampoline as \$1,599.00.

The landlord testified that the tenant has damaged the rental unit and expects that cleaning and repairs would cost \$270.00. The landlord said that he has received some estimates on the cost of cleaning and repairs.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant has failed to file an application for dispute resolution within the 10 days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ends on the corrected effective date of the 1 Month Notice, May 31, 2017.

I find that the landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit, the effective date of the notice and the reasons for ending the tenancy. Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date has passed I issue an Order of Possession effective two 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. Pursuant to section 7(2) of the *Act* the claimant must take reasonable steps to attempt to mitigate the loss suffered.

I find that an order was issued in the earlier hearing that the landlord hire a pest control company. As an order has already been made I find that I do not have the jurisdiction to consider a matter that has already been the subject of a final and binding decision. The landlord's claim for the cost of pest control is dismissed.

I find that the damages that the landlord claims arising from the altercation with the tenant on May 25, 2017 to not be damages arising from a violation of the *Act*, regulation or tenancy agreement. I find the landlord's claim for general damages, medication, and loss of income to be beyond the jurisdiction of the Branch. Accordingly, I find that I do not have jurisdiction to make a decision on this portion of the application and dismiss it.

I find that there is insufficient evidence to show that the landlord is entitled to a monetary award for the presence of a trampoline on the common area. I accept the evidence of the parties that the trampoline was moved onto the property at the start of the tenancy. I find there is insufficient evidence that storing the trampoline caused damage or loss to the landlord that entitles the landlord to compensation as claimed. I dismiss this portion of the landlord's application.

I find it is premature to issue an order for the cost of repairs and cleaning. The tenant has the right to clean the rental unit herself prior to vacating. The landlord said that the repairs and cleaning have not yet been arranged and the landlord's claim is based on verbal quotations received. I find there is insufficient evidence that there is presently damage or loss that entitles the landlord to a monetary award. The portion of the landlord's application for future cleaning and repair costs is dismissed with leave to reapply.

As I have dismissed the majority of the landlord's application the landlord is not entitled to recover the filing fee for this application.

Conclusion

I grant an Order of Possession to the landlord 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 balance of the landlord'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: July 13, 2017

Residential Tenancy Branch