



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FF; CNL, MNDC, MNSD, OLC, O, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for landlord's use of property, pursuant to section 55;
- authorization to recover the filing fee for her application, pursuant to section 72.

This hearing also dealt with the tenants' cross-application pursuant to the *Act* for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated May 15, 2017 ("2 Month Notice"), pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of the security deposit, pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- other unspecified remedies;
- authorization to recover the filing fee for their application, pursuant to section 72.

Three of four tenants did not attend this hearing, which lasted approximately 74 minutes. The landlord and her agent (collectively "landlord") and tenant TB ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord's agent confirmed that he had authority to speak on the landlord's behalf at this hearing and he provided a written authorization, dated July 6, 2017, signed by the landlord. The tenant confirmed that he had authority to speak on behalf of the other three tenants, who are his family members, named in both parties' applications, as an agent at this hearing (collectively "tenants").

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. The tenant confirmed that the landlord's written evidence was received by two of the other tenants, although he did not have it in front of him during

the hearing. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application. I considered both parties' written evidence at the hearing, as both parties were duly served and had no objections to me considering the evidence.

Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to obtain a return of the security deposit?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to other unspecified remedies?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 1, 2017. Monthly rent in the amount of \$2,500.00 is payable on the first day of each month. A security deposit of \$1,250.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. A move-in condition inspection report was completed for this tenancy but a copy was not provided for this hearing.

The landlord seeks an order of possession based on the 2 Month Notice. The landlord further seeks to recover the \$100.00 filing fee paid for her application.

The tenants seek compensation totalling \$1,315.00 from the landlord. They also seek to recover the \$100.00 application filing fee. The tenants seek \$600.00 for moving expenses if they are required to move to a new unit.

The tenants also seek \$500.00 for cleaning expenses when they began their tenancy, claiming that the landlord failed to clean the renovated property and left dust everywhere. They did not provide a breakdown for the above expense, nor did they provide any receipt or invoice, stating only that they personally cleaned the unit. The landlord testified that the move-in condition inspection report does not reference that any cleaning was required and the unit was properly cleaned, given that it was renovated.

The tenants seek \$75.00 for installing a landline telephone jack inside the rental unit because there was no existing one there. The tenants did not submit a receipt or invoice for this cost. The landlord disputed the cost and claimed that the tenants are not entitled to an expense for the personal use of their phone.

The tenants seek \$140.00 for having to mow the lawn and clean out garbage from the rental unit when they moved in. The tenants did not provide a receipt or invoice for this cost. The landlord disputed the cost and claimed that the move-in condition inspection report does not indicate that any lawn mowing or garbage disposal was required at the rental unit.

Settlement of Some Issues

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and an order. During the hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of portions of their dispute.

Both parties agreed to the following final and binding settlement of portions of their dispute at this time:

1. Both parties agreed that this tenancy will end by 12:00 p.m. on November 1, 2017, by which time the tenants and any other occupants will have vacated the rental unit;
2. Both parties agreed that the landlords will obtain expert opinions regarding the damages to the flooring in the rental unit and will notify the tenants about the results, after which the parties will decide how to proceed.

I made a decision regarding the remainder of the tenants' application because the parties were unable to reach a settlement on those issues.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish their claim. To prove a loss, the tenants must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the tenants' application for a monetary order for moving expenses of \$600.00 with leave to reapply, as the tenants have not yet incurred these costs and it is a premature claim.

I dismiss the tenants' application for cleaning expenses of \$500.00, a telephone connection setup fee of \$75.00 and landscaping costs of \$140.00. The tenants failed to provide receipts, invoices or estimates to prove the amount of their claims. They failed part 3 of the above test.

As the tenants settled a portion of their application and were unsuccessful in the remainder, I find that they are not entitled to recover the \$100.00 filing fee paid for their application.

I dismiss the landlord's claim to recover the \$100.00 application filing fee, as the landlord settled her application and I was not required to make a decision on the merits of her application.

Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenant(s) and any other occupants fail to vacate the rental premises by 12:00 p.m. on November 1, 2017. The tenant(s) must be served with this Order in the event that the tenant(s) and any other occupants fail to vacate the rental premises by 12:00 p.m. on November 1, 2017. Should the tenant(s) fail to comply with this Order,

this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenants' application for a monetary order for moving expenses of \$600.00 is dismissed with leave to reapply.

The tenants' application for a monetary order of \$715.00 is dismissed without leave to reapply. The tenants' application for "other unspecified remedies" is dismissed without leave to reapply, as no submissions were presented regarding this claim during the hearing.

Both parties' applications to recover the \$100.00 filing fee are dismissed without leave to reapply.

The tenants' security deposit of \$1,250.00 will be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

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: August 02, 2017

Residential Tenancy Branch