



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, FF, CNC, RR,

Introduction

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

The tenant applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

The landlord applied for:

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

The tenant did not attend this hearing which lasted 20 minutes. The landlord appeared and was provided a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that he served the 1 Month Notice dated June 11, 2017 on the tenant personally on that date. Pursuant to section 88 of the *Act*, I find that the tenant was served on that date. The landlord testified that he served the landlord's application for dispute resolution and evidence on the tenant by registered mail sent on August 4, 2017. The landlord provided a Canada Post tracking number as evidence of service. Pursuant to sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application package on August 9, 2017, five days after mailing.

Preliminary Issue – Occupant

An individual who identified himself as the current occupant of the rental unit attended the hearing. The occupant said that he was allowed to move into the rental unit by the named tenant and share the rent. The occupant confirmed that he is not a party to the tenancy

agreement nor does he have authority to act as the tenant's agent. The landlord said that he has not agreed to include the occupant as a tenant under the tenancy agreement.

Guideline 13 sets out that where a tenant allows a person to move into the premises, the new occupant has no rights or obligations under the tenancy agreement unless all parties agree to enter into a tenancy agreement. I accept the undisputed evidence of the parties that the occupant was not made a party to any tenancy agreement and consequently, has no rights or obligations under the tenancy agreement. While the occupant was allowed to attend the hearing I informed him that I would not consider any evidence he provided for these applications.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Should the landlord be ordered to provide services or facilities?

Is the landlord entitled to a monetary order for damage and loss as claimed?

Is the landlord entitled to recover the filing fee of their application from the tenant?

Background and Evidence

The landlord provided undisputed testimony about the following facts. This periodic tenancy began in January or February, 2017. The monthly rent is \$1,000.00 payable on the first of each month. A security deposit of \$500.00 was paid by the tenant and is still held by the landlord. There is no written tenancy agreement.

The landlord testified that the tenant caused damage to the rental unit and there have been losses as a result of the damage. The landlord testified that the tenant brought garbage into the rental unit and there have been costs to arrange disposal. The landlord submitted into written evidence two invoices from disposal companies for a total of \$211.33 paid for trash pickup. The landlord is claiming a rounded down figure of \$210.00 for the trash disposal.

The landlord testified that the doors in the rental unit have been destroyed through the tenant's actions and they need to be replaced. The landlord estimated that the replacement cost would be approximately \$70.00 for each door. The landlord claims the amount of \$140.00 for the replacement of doors in the rental unit.

Analysis

The tenant did not attend the hearing which was scheduled by conference call at 11:00am. The occupant confirmed he was not authorized to act as the tenant's agent. Rule 7.3 of the Rules of Procedure provides that:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply.

Consequently I dismiss the tenant's application without leave to reapply.

Section 55 of the *Act* provides that:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the tenant's application, and I find that the landlord's 1 Month Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provide the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end, I find that the landlord is entitled to an Order of Possession pursuant to section 55. As the corrected effective date of the notice has passed, I issue an Order of Possession effective two (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 also has a duty to take reasonable steps to mitigate their loss.

I accept the landlord's undisputed evidence that there has been damage to the rental unit caused by the tenant. I accept the landlord's evidence that the total amount of the costs for repairs and waste removal is \$350.00. Accordingly, I issue a monetary award in the landlord's favour for damages of \$350.00 pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain the tenant's security deposit of \$500.00 in satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I dismiss the tenant's application.

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 landlord may retain \$450.00 of the security deposit for this tenancy. The security deposit is reduced to \$50.00.

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 23, 2017

Residential Tenancy Branch