



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR OPC FF MNDC

Introduction

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

- a monetary order for compensation for loss or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an Order of Possession for cause, pursuant to section 55;
- an Order of Possession for unpaid rent, pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

While the landlord and the landlord's agent LL attended the hearing by way of conference call, the tenant did not. The landlord's agent LL spoke on behalf of the landlord in this hearing, and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord's agent testified that the tenant was served with the landlord's application for dispute resolution hearing package and evidence on June 19, 2017 by way of registered mail. The landlord provided Canada Post tracking numbers during the hearing. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application and evidence on June 24, 2017, five days after its registered mailing.

The landlord's agent testified that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 6, 2017 ("10 Day Notice"), on April 18, 2017, by way of posting to the rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on June 9, 2017, three days after its posting.

The landlord's agent testified that the tenant was served with the landlord's 1 Month Notice to End Tenancy for Cause, dated May 31, 2017 ("1 Month Notice"), on May 31, 2017, by way of posting to the rental unit door. In accordance with sections 88 and 90 of

the *Act*, I find that the tenant was deemed served with the landlord's 1 Month Notice on June 3, 2017, three days after its posting.

Although the landlord applied for a monetary Order of \$3,700.00 in their initial claim, since they applied another \$2,600.00 in rent has become owing that was not included in their application. The landlord also indicated in the hearing that the fines levied against the tenant totaled \$2,200.00 and not \$2,400.00 as indicated on the monetary worksheet. I have accepted the landlord's request to amend their original application from \$3,700.00 to \$6,100.00 to reflect the correction, as well as the additional unpaid rent that became owing by the time this hearing was convened.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

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

Is the landlord entitled to monetary compensation for unpaid rent or for money owed?

Is the landlord entitled to recover their filing fee for this application?

Background and Evidence

The landlord's agent testified regarding the following facts. This month-to-month tenancy began on April 1, 2016 with monthly rent in the amount of \$1,300.00 payable on the first day of each month. The landlord holds a security deposit in the amount of \$650.00 for this tenancy. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice, indicating an effective move-out date of June 30, 2017 as the tenant failed to pay the rent for June 2017. The landlord testified that the tenant has not paid any rent since the 10 Day Notice was issued, and now owes \$1,300.00 rent for June 2017 through to August 2017. The total outstanding rent is \$3,900.00. The landlord is seeking an Order of Possession as well as monetary compensation for the unpaid rent.

The landlord also testified that the tenant owes \$2,200.00 in fines levied by the strata for failing to abide by the strata bylaws on multiple occasions, from February 2016 through to January 2017. The landlord included a detailed statement from the property management company listing \$2,200.00 in bylaw fines.

On May 31, 2017 the landlord issued the tenant a 1 Month Notice for Cause as the tenant ignored the warnings given to her by the landlord and strata, and continued to incur more bylaw infractions.

The landlord included copies of the 10 Day and 1 Month Notices in their evidence.

Analysis

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Section 52 of the Act provides the following requirements requiring the form and content of notices to end tenancy:

52 *In order to be effective, a notice to end a tenancy must be in writing and must*

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form...

The 1 Month Notice to End Tenancy provided to tenant by the landlord on May 31, 2017 does not comply with Section 52(c) as the landlord did not indicate an effective date on the Notice. On this basis I find the landlord's 1 Month Notice to be invalid, and dismiss the landlord's application for an Order of Possession pursuant to this Notice.

The tenant failed to pay the rent in full, within five days of being deemed to have received the 10 Day Notice. The tenant did not make an application pursuant to section

46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on June 19, 2017, the corrected effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by June 19, 2017. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*.

The landlord's agent provided undisputed evidence that the tenant failed to pay the outstanding rent in the amount of \$3,900.00. Therefore, I find that the landlord is entitled to \$3,900.00 in outstanding rent for this tenancy. The landlord's agent also provided undisputed evidence that the tenant failed to pay the \$2,200.00 owing for the numerous strata bylaw infractions levied to the tenant. The landlord providing supporting evidence to support the multiple bylaw infractions by the tenant and the corresponding fines. On this basis I find that the landlord is entitled to recover the \$2,200.00 in fines the tenant has accrued.

The landlord continues to hold the tenant's security deposit of \$650.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

As the landlord was successful in their application, I find that they are entitled to recover the filing fee for this application.

Conclusion

I grant an Order of Possession to the landlords effective **two (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.

I issue a \$5,550.00 Monetary Order in favour of the landlord under the following terms, which allows the landlord to recover unpaid rent and fines, plus the filing fee, and also allows the landlord to retain the tenant's security deposit:

Item	Amount
Unpaid Rent for June 2017	\$1,300.00
Unpaid Rent for July 2017	1,300.00

Unpaid Rent for August 2017	1,300.00
Money Owed (Fines Levied by Strata)	2,200.00
Less Security Deposit	-650.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$5,550.00

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: September 1, 2017

Residential Tenancy Branch