



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR, OPL, OPR, FF

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord sought an Order of Possession based on a 2 Month Notice to End Tenancy for Landlord's Use and a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, monetary compensation from the Tenant for unpaid rent and to recover the filing fee.

The hearing was conducted by teleconference on December 5, 2017. Only the Landlord called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified that he personally served the Tenant with the Notice of Hearing and the Application on November 17, 2017. A copy of the proof of service was provided in evidence and confirmed that the service on the Tenant was witnessed by P.S... I find the Tenant was duly served as of November 17, 2017 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Landlord/Tenant's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to monetary compensation from the Tenant?
3. Should the Landlord be authorized to retain the Tenant's security deposit?

4. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that the tenancy began December 1, 2015. Monthly rent was payable in the amount of \$750.00 and the Tenant paid a security deposit in the amount of \$375.00.

The Landlord personally served the Tenant with a 2 Month Notice to End Tenancy for Landlord's Use on October 26, 2017. The effective date of the 2 Month Notice is December 31, 2017. The 2 Month Notice informed the Tenant that he had 15 days in which to apply to dispute the Notice. Landlord confirmed that the Tenant did not apply to dispute the 2 Month notice.

The Landlord testified that the Tenant failed to pay rent for November 2017, as well as for December 2017. The Landlord then issued a 10 Day Notice to End Tenancy for Unpaid rent. The 10 Day Notice failed to indicate the effective date of the Notice.

Filed in evidence was a Monetary Orders Worksheet in which the Landlord confirmed he sought compensation for unpaid rent for November 2017, December 2017 and January 2018. The Landlord also sought recover of the filing fee.

Analysis

After consideration of the Landlord's undisputed testimony and evidence, and on a balance of probabilities I find as follows.

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website: www.gov.bc.ca/landlordtenant.

The Landlord seeks an Order of Possession based on the 2 Month Notice to End Tenancy for Landlord's Use issued pursuant to section 49. Section 49 provides in part as follows:

Landlord's notice: landlord's use of property

49 ...

- (8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

- (9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit by that date.

I find the Tenant was personally served with the 2 Month Notice on October 26, 2017. I accept the Landlord's evidence that the Tenant failed to dispute the 2 Month Notice within 15 days, and by operation of section 49(9), the Tenant has accepted the end of the tenancy. **The Landlord is therefore entitled to an Order of Possession effective December 31, 2017, the effective date of the 2 Month Notice.**

I accept the Landlord's evidence that the Tenant failed to pay rent for November and December 2017. A Tenant receiving a 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 49 is entitled to a free month's rent pursuant to section 51(1) which reads as follows:

Tenant's compensation: section 49 notice

- 51** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Consequently, I find the Landlord is entitled to the sum of \$750.00 representing rent for November 2017. The Tenant is not obligated to pay rent for December 2017 pursuant to sections 49 and 51 of the *Act*.

As January 2018 has yet to occur, I dismiss the Landlord's claim for rent for this month; should the Tenant not vacate the rental unit by December 31, 2017 and over-hold his tenancy, the Landlord is entitled to seek compensation for loss of rent.

The Landlord also sought an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities; however, the 10 Day Notice failed to indicate an effective date and as such is invalid pursuant to sections 46(2) and 52(c) of the *Act*; for greater clarity I reproduce section 52(c) as follows:

Form and content of notice 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,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

As the Landlord has been successful, I award him recovery of the \$100.00 filing fee for a total award of **\$850.00**.

Conclusion

The Landlord is granted an Order of Possession effective **December 31, 2017** pursuant to the 2 Month Notice to End Tenancy for Landlord's Use.

The Landlord is entitled to monetary compensation in the amount of \$850.00 for unpaid rent for the month of November 2017 in addition to recovery of the filing fee. The Landlord may retain the Tenant's security deposit of \$375.00 in partial satisfaction of the amount awarded and is granted a Monetary Order for the balance due in the amount of **\$475.00**. This Order must be served on the Tenant and may be filed and enforce in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

The Landlord's claim for compensation for loss of rent for January 2018 is dismissed with leave to reapply.

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: December 15, 2017

Residential Tenancy Branch