



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AMACON GILBERT ROAD DEVELOPMENT PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: FFL MNDCL-S MNDL-S OPC

Introduction

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

- an Order of Possession for cause, pursuant to section 55;
- a monetary order for damage to the unit, site, or property, money owed or compensation for loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

While the landlord's agent, EJ, attended the hearing by way of conference call, the tenant did not. The landlord's agent 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 February 16, 2018 by way of registered mail. The landlord provided Canada Post tracking numbers in their evidence. 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 February 21, five days after its registered mailing.

The landlord's agent testified that the tenant was served with 1 Month Notice to End Tenancy for Cause ('1 Month Notice') on December 1, 2017 by way of posting the 1 Month Notice on the tenant's door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 1 Month Notice on December 4, 2017, three days after posting.

Issue(s) to be Decided

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

Is the landlord entitled to a monetary order for damages or losses for this tenancy?

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of their claim?

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

Background and Evidence

The landlord's agent provided undisputed testimony that this fixed-term tenancy began on September 1, 2017. The current monthly rent is \$1,100.00, due on the first of each month. The landlord currently holds a security deposit in the amount of \$550.00, and the tenant continues to reside in the rental unit.

The landlord submitted the notice to end tenancy providing four grounds:

1. the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. the tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant; and
3. the tenant has engaged in illegal activity that has, or is likely to, damage the landlord's property; and
4. the tenant has caused extraordinary damage to to the unit/site or property/park.

The landlord's agent testified that the tenant has caused significant damage to the suite. The damage is significant enough to affect the neighbouring units as the tenant damaged the walls. The landlord submitted photos depicting the damage.

The landlord also is seeking a monetary order in the amount of 1 month's rent and \$1,965.00 for the anticipated rental losses and cost to fix the damage due to the tenant's actions.

Analysis

Based on undisputed testimony of the landlord's agent, I find that the tenant was served with the Notice to End Tenancy, and I find that the 1 Month Notice does comply with the form and content provisions of section 52 of the *Act.*, which states that the Notice 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.

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten 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 their application for dispute resolution within the ten 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 ended on the effective date of the 1 Month Notice, January 31, 2018.

In this case, this required the tenant and anyone on the premises to vacate the premises by January 31, 2018. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. As the tenant is still residing there, I find this portion of the landlord's monetary claim to be premature, and the landlord's monetary application for losses and damages associated with this tenancy is dismissed with leave to reapply.

As the landlord was partially successful in their application, I allow the landlord to recover half of the filing fee for this application. The landlord continues to hold the tenant's security deposit of \$550.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$50.00 of the tenant's security deposit plus applicable interest in partial satisfaction of this monetary award. Over the period of this tenancy, no interest is payable on the security deposit.

Section 38 (1) of the *Act* states that within 15 days of the latter of receiving the tenant's forwarding address in writing, and the date the tenant moves out, the landlord must either return the tenant's security deposit, or make an application for dispute resolution against that deposit. As the tenant has not yet moved out, I find the landlord's application to retain the security deposit to be premature, and I dismiss this portion of the landlord's application with leave to reapply, with the exception of the \$50.00 which may be retained to offset the filing fee for this application.

Conclusion

I find that the landlord's 1 Month Notice is valid and effective as of January 31, 2018.

I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I find that the landlord is entitled to half of the filing fee. I order the landlord to retain \$50.00 of the tenant's security deposit in satisfaction of this monetary claim.

The remainder of the landlord's application 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: April 19, 2018

Residential Tenancy Branch