



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the ‘Application’) that was filed by the Landlord under the *Residential Tenancy Act* (the “Act”), for a Monetary Order for money owed or damage or loss under the Act, regulation or tenancy agreement, recovery of the filing fee and for an Order of Possession.

The hearing was convened by telephone conference call and was attended by the Landlord, who provided affirmed testimony. The Tenant did not attend. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure 9the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of these documents as outlined below.

The Landlord testified that the Application and the Notice of Hearing were personally served on the Tenant on October 14, 2017. Based on the above, I find that the Tenant was served the Application and the Notice of Hearing on October 14, 2017.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure. However, I refer only to the relevant facts and issues in this decision.

At the request of the Landlord, copies of the decision and any orders issued in his favor will be e-mailed to him at the e-mail address provided in the online application system.

Preliminary Matters

The Landlord sought an Order of Possession based on a One Month Notice to End Tenancy for Cause (the “One Month Notice”) as well as a Monetary Order for money owed or damage or loss under the *Act*, regulation or tenancy agreement. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Landlord applied for an Order of Possession, I find that the priority claim relates to whether the tenancy will continue or end and I find that the other claim by the Landlord is either not sufficiently related to the One Month Notice, or premature, or both. As a result, I exercise my discretion to dismiss the Landlord’s claim for money owed or damage or loss under the *Act*, regulation or tenancy agreement with leave to re-apply.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to sections 47 and 55 of the *Act*?

Background and Evidence

The Landlord testified that the Tenant resides in supportive housing, that his month-to-month tenancy began on June 1, 2009, and that rent in the amount of \$950.00 is due on the first day of each month. The Landlord stated that the Tenant has begun stealing items from other occupants of the building, using drugs on the property, and causing serious disturbances and safety concerns. As a result, the Landlord stated that he personally served the Tenant with a One Month Notice on December 20, 2017.

The One Month Notice in the documentary evidence before me, dated December 20, 2017, has an effective vacancy date of February 1, 2018, and lists the following grounds for ending the tenancy:

- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- The tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;

- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that put the landlord's property at significant risk;
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property;
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; and
- The tenant has not done required repairs to damage to the rental unit.

The Landlord stated that the Tenant did not dispute the One Month Notice but continues to reside in the rental unit. Although the Landlord stated that the Tenant has paid rent for use and occupancy of the rental unit for April, 2018, the Landlord requested a two day Order of Possession as the RCMP have been called numerous times to deal with the Tenant and his drug use on the premises presents a serious risk to the Landlord, the other occupants, and the property.

The Tenant did not attend the hearing to provide any evidence of testimony for my consideration.

Analysis

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 of the *Act*, I find that the Tenant was personally served with the One Month on December 20, 2017.

Section 47(1) of the *Act* outlines the grounds upon which a landlord may serve a One Month Notice on a tenant. Section 47(5) of the *Act* states that if a tenant who has received a notice under this section does not make an application for dispute resolution within 10 days after the date they received the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

As there is no evidence before me to the contrary, I find that the Tenant has failed to dispute the One Month Notice within the 10 day period prescribed in section 47(4) of the

Act. Based on the foregoing, 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 One Month Notice, February 1, 2018. As the effective date of the One Month Notice has passed and the Landlord has requested a Two Day Order of Possession due to safety concerns, the Order of Possession will be effective two days after service on the Tenant.

Pursuant to sections 72 and 67 of the *Act*, the Landlord is also entitled to a Monetary Order in the amount of \$100.00 for the recovery of the filing fee.

Conclusion

The Landlord is granted an Order of Possession, which will be effective **two (2) days after service of this order** on the Tenant. The Landlord is provided with this Order in the above terms and 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 and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$100.00. The Landlord is provided with this Order in the above terms and 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. If the Landlord holds a security deposit or pet damage deposit paid by the Tenant, the Landlord may retain the \$100.00 from either the security deposit or the pet damage deposit in lieu of enforcing the Monetary Order.

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: May 3, 2018

Residential Tenancy Branch