



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDCL-S, MNDL-S, MNRL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords filed under the *Residential Tenancy Act* (the “Act”), for an order of possession, a monetary order for unpaid rent, compensation for losses due to damages, and to recover the cost of the filing fee from the Tenant.

Both the Landlords and the Tenant attended the hearing and were affirmed to be truthful in their testimony. The Tenant testified that she had not been served with the notice of hearing documents, and had only found out about the hearing seven days ago. The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing within three days of the hearing being scheduled.

The Landlords testified that the Application for Dispute Resolution and Notice of Hearing documents had been sent to the Tenant by registered mail sent on April 26, 2018, a Canada post tracking number was provided as evidence of service. Section 90 of the *Act* determines that a document served in this manner is deemed to have been served five days later. I find that the Tenant has been duly served in accordance with the *Act*.

Both parties were provided with the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

The Landlords testified that they had additional documentary evidence, that they wish to submit, to support their request for compensation from the Tenant; for unpaid rent and

loss of rental income. The Landlords testified that they were not able to submit these documents into evidence before the 14-day cut off date as outlined in section 3.14 of the Rules of Procedure. The Landlords requested permission to submit this documentary evidence, during this hearing.

The Tenant testified that she had not received copies of the documentary evidence that the Landlords were requesting to submit during the hearing.

As the Tenant had not been served with this additional evidence, and therefore would not have the opportunity to review that evidence and respond, as required under section 3.19 of the Rules of Procedure, I denied the Landlord's request.

Subsequently, I am dismissing the Landlord's request for monetary compensation due to lost rental income and unpaid rent, with leave to reapply, to allow the Landlords and the Tenant time prepare their case.

I will proceed on the matter of the order of possession pursuant to section 55 of the *Act*.

Issue(s) to be Decided

- Are the Landlords entitled to an order of possession pursuant to section 55 of the *Act*?
- Are the Landlords entitled to a monetary order for unpaid rent?
- Are the landlords entitled to monetary compensation for damages pursuant to section 62 of the *Act*?
- Are the Landlords entitled to recover the cost of the filing fee?

Background and Evidence

Both the Landlords and the Tenant testified that the tenancy began on February 1, 2018, as a month to month tenancy. Rent in the amount of \$1,275.00 was to be paid by the first day of each month and at the outset of the tenancy, the Tenant paid a \$637.50 security deposit.

Both the Landlords and the Tenant testified that the Landlords served the Tenant with a One Month notice for Cause ("the Notice") on April 12, 2018, in person. The Notice has an effective date of May 31, 2018. The reasons checked off by the Landlords within the One Month Notice are as follows:

- 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 or the landlord

The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Tenant testified that she had received the Notice and did not file an application to dispute the Notice. The Tenant testified that she did not dispute the Notice as she believed that the Landlords had agreed to continue the tenancy with her. The Tenant testified that the Landlords had offered to continue her tenancy if she was willing to sign an amendment to her tenancy, regarding appropriate behaviour on the rental property. The Tenant testified that she requested to see this document in advance of a planned meeting between her and the Landlords. When the Landlords refused to give her the document in advance, the Tenant stated that she refused to sign the amendment to her tenancy and did not meet with the Landlords.

The Landlords testified that they had offered to cancel the Notice if the Tenant would agree to sign an amendment to the tenancy, that detailed expectable behaviour on the rental property. The Landlords testified that the Tenant refused to sign this document.

The Landlords are looking to enforce the Notice and are seeking an order of possession for 1:00 p.m. on May 31, 2018.

Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant received the Notice on April 12, 2018, and did not apply to dispute the Notice. The Tenant is therefore conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy will end on the effective date of the Notice.

I find that the Landlords are entitled to an order of possession, pursuant to section 55 of the *Act*, effective at 1:00 pm on May 31, 2018, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

As the Landlords were successful in their application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for their application. I order that the Landlords retain the amount of \$100.00 from the Tenant's security deposit in satisfaction of this order.

Conclusion

The Tenant failed to dispute the Notice. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

I grant an **Order of Possession** to the Landlords effective not later than **1:00 p.m. on May 31, 2018**. 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 order that the Landlords retain the amount of **\$100.00** from the Tenant's security deposit to recover the filing fee paid for their application.

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 29, 2018

Residential Tenancy Branch