



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNRL-S, 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”), seeking an Order of Possession based on a One Month Notice to End Tenancy for Cause (the “One Month Notice”), a Monetary Order for unpaid rent, authorization to withhold the security deposit against unpaid rent, and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord, the Landlord’s spouse, who is also an owner of the property, a witness for the Landlord’s and the Tenant. Although all parties provided an affirmation at the outset of the hearing, the witness was excluded from the proceedings while the parties provided their evidence and testimony and ultimately was not called upon to provide any testimony for my consideration. As a result, only the Tenant and the Landlords provided affirmed testimony for my consideration.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of documentary evidence.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be mailed to them.

Preliminary Matters

The parties agreed that since the filing of the Application, the amount of outstanding rent has increased from \$2,100.00 to \$2,800.00. Rule 4.2 of the Rules of Procedure

states that the Application may be amended in the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the date the Application was filed. The Application was therefore amended pursuant to the *Act* and the Rules of Procedure to reflect that the Landlord is seeking \$2,800.00 in outstanding rent.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to compensation for outstanding rent and to withhold the Tenant's security deposit?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

Although a written tenancy agreement was not before me for consideration, the parties agreed that the tenancy began approximately three years ago, that rent in the amount of \$700.00 is due on the first day of each month and that a security deposit in the amount of \$350.00 was paid at the start of the tenancy, which the Landlord still holds.

The Landlord testified that the Tenant is repeatedly late paying rent, and as a result, a One Month Notice was posted to the door of the rental unit on April 29, 2018. The One Month Notice in the documentary evidence before me, dated April 29, 2018, has an effective vacancy date of June 1, 2018, and states that the reason for ending the tenancy is because the Tenant is repeatedly late paying rent. The One Month Notice also states that it was posted to the door of the rental unit on April 29, 2018, and the Tenant confirmed that he received it on that date.

The Tenant acknowledged that he did not file an application seeking to dispute the One Month Notice and confirmed that he still resides in the rental unit. The parties also agreed that the Tenant currently owes \$2,800.00 in outstanding rent. As a result of the above, the Landlord sought authorization to withhold the \$350.00 security deposit towards the outstanding rent, a Monetary Order for the balance owed, recovery of the filing fee and an Order of Possession for July 31, 2018.

Analysis

Section 47 of the *Act* outlines the grounds on which to issue a notice to end tenancy for cause. Specifically, section 47(1)(b) states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent.

Section 47(4) of the *Act* states that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice. Section 47(5) of the *Act* also states that if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), 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.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88 and 90 of the *Act*, I find that the Tenant was served with the One Month Notice on April 29, 2018, the day they acknowledge receiving it.

Section 55(2) of the *Act* states that a landlord may request an order of possession of a rental unit if notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Based on the documentary evidence and testimony before me, I find that the Tenant did not dispute the One Month Notice within the 10 day period provided for under the *Act*. Based on the foregoing, I find that the Tenant is therefore 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, June 1, 2018. As the effective date of the One Month Notice has passed and the Landlord testified that the Tenant may stay until July 31, 2018, the Landlord is entitled to an Order of Possession for 1:00 P.M. on July 31, 2018.

Pursuant to section 72 of the *Act*, I also find that the Landlord is entitled to recovery of the \$100.00 filing fee and to retain, in full, the \$350.00 security deposit paid by the Tenant in partial recovery of the above noted amounts owed. As a result, the Landlord is entitled to a Monetary Order in the amount of \$2,550.00; \$2,800.00 in outstanding rent, plus the \$100.00 filing fee, less the \$350.00 security deposit.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective at **1:00 P.M. on July 31, 2018, 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 in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$2,550.00. 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.

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: July 24, 2018

Residential Tenancy Branch