



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **Landlord:** OPC, MNRL-S, FFL
 Tenant: CNC, OLC, RP

Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* ("Act").

The landlord sought:

- an Order of Possession based on a One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to sections 47 and 55 of the *Act*;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72 of the *Act*.

The tenants sought:

- cancellation of the landlord's One Month Notice pursuant to section 47;
- an order for the landlord to make repairs to the rental unit pursuant to section 32; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

The landlord's agent (the landlord) and Tenant S.H. attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. Tenant S.H. indicated that they would be representing the interests of both tenants in this matter.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The tenant acknowledged receipt of the Landlord's Application for Dispute Resolution (the Landlord's Application) and evidence which was sent by registered mail to the

rental unit on July 15, 2018. In accordance with section 88 and 89 of the *Act*, I find that the tenants are duly served with the Landlord's Application and Evidence.

The tenant testified that she sent the Tenants' Application for Dispute Resolution (the Tenants' Application) and evidence by registered mail to the landlord's previous agent whose address is listed on the One Month Notice, which was returned to her unclaimed.

Preliminary Matters

The landlord stated that the agent named on the One Month Notice is no longer representing the owner of the rental unit as of June 01, 2018, and requested for the previous agent to be removed from the proceedings as the company has dissolved. The landlord further stated that the tenant was notified of this fact in writing as well as verbally and that the tenant did not provide their evidence or Application to the new landlord upon being notified of the change in owner representation. The landlord testified that they requested the Application and evidence from the tenant but that the tenant has not been cooperative and has not paid the full rent for the rental unit since May 2018.

The tenant confirmed that they were aware that the previous agent was no longer representing the owner and also confirmed that they did not provide their evidence or Tenants' Application to the landlord who is now acting as the agent for the owner of the rental unit.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure (the Rules) states that documentary evidence that is intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. I find that the tenant has not disputed that they were aware of the change in landlord representation as of June 2018, and that they had enough time to provide the Tenants' Application and evidence to the landlord in accordance with the Rules. As I have found that the tenants did not serve the landlord with their evidence and that the landlord may be prejudiced by this as they did not have a chance to respond to the tenants' evidence, the tenants' evidence is not accepted for consideration.

As the tenant and the landlord have both confirmed that the agent named on the One Month Notice is no longer a party to the proceedings, I have amended the respondent on the Tenants' Application to match the the applicant who is named on the Landlord's Application and removed the previous agent from the proceedings pursuant to section 64 of the *Act*.

At the outset of the hearing the landlord sought to increase their monetary claim from \$2,589.00 to \$4,617.00 to reflect the tenant's failure to pay \$1,895.00 in monthly rent and \$133.00 in utilities for August 2018, the additional month of unpaid rent and utilities waiting for this hearing. Residential Tenancy Rule of Procedure 4.2 states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. I allow the amendment for the unpaid rent as this was clearly rent that the tenants would have known about and resulted since the landlord submitted their Application for Dispute Resolution.

I do not allow for the landlord to amend their Application for the August 2018 utility charge owing in the amount of \$133.00 as the tenants were not aware that the unpaid utilities for August 2018 would be addressed in this hearing which may prejudice them as they did not have a chance to respond to the landlord's requested amendment.

Issue(s) to be Decided

Should the One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order for unpaid rent?

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

Are the tenants entitled to an order for the landlord to comply with the *Act*?

Are the tenants entitled to an order for the landlord to make repairs to the rental unit?

Background and Evidence

The landlord provided written evidence that this tenancy commenced on April 01, 2018, with a monthly rent of \$1,895.00, due on the first day of each month. The landlord testified that they currently retain a security deposit in the amount of \$947.50.

A copy of the landlord's May 30, 2018, One Month Notice was entered into evidence. In the One Month Notice, requiring the tenant to end this tenancy by June 30, 2018, the landlord cited the following reasons for the issuance of the One Month Notice:

Rental unit/site must be vacated to comply with a government order.

Security or pet damage deposit was not paid within 30 days as required by tenancy agreement

The landlord also submitted a copy of a Statement of Claim which outlines their monetary claim and their request for the Order of Possession.

The landlord testified that there is a government order which requires the rental unit to be vacant due to it not being an authorized secondary suite with the municipality. The landlord stated that they are seeking unpaid rent and utilities owing since June 2018 and that they are also seeking an Order of Possession.

The tenant testified that they received the One Month Notice on May 31, 2018, and confirmed that they did not file the Tenants' Application until June 15, 2018, due to confusion regarding who their landlord is. The tenant also indicated that there were discussions with the landlord regarding an extension of their tenancy beyond the effective date of the One Month Notice which also played a factor in the tenants not applying until June 15, 2018.

The tenant confirmed that they owe unpaid rent for the rental unit but disputed the unpaid utilities as she stated that there is no agreement as to the amount of utilities to be paid and that the tenants have not seen any of the bills used to calculate the amount of utilities owing.

Analysis

Having reviewed the above evidence and testimony, I find that the tenants were duly served with the One Month Notice on May 31, 2018, in accordance with section 88 of the *Act*. The One Month Notice indicated the tenants had 10 days to file an Application for Dispute Resolution seeking to cancel the Notice.

Section 47(4) and (5) of the *Act* stipulates that a tenant who has received a notice under this section, who does not make an application for dispute resolution within 10 Days after the date the tenant receives the notice, 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.

Section 66 of the *Act* states the director may extend a time limit established under the *Act* only in exceptional circumstances. Residential Tenancy Policy Guideline #36 states that "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend the time limit. The Guideline goes on to say that exceptional implies that the reason for failing to do something at the required time is very strong and compelling.

I find that the tenant has failed to provide sufficient evidence to establish that there were exceptional circumstances which prevented her from making an application to dispute the One Month Notice within the 10 days allowed by section 47(4) of the *Act*. I find that

the tenant was at liberty to file their Application to dispute the One Month Notice within the 10 days allowed by the Act and that there is no written evidence to indicate that the landlord offered to withdraw the One Month Notice or extend the effective date and that this would prevent the tenants from filing an application for dispute resolution.

I find that the tenant's Application was submitted to the Residential Tenancy Branch (RTB) on June 15, 2018. As I have found that the tenants received the One Month Notice on May 31, 2018, I find that the tenant filed their Tenants' Application after more than the 10 days allowed by section 47(4) of the Act. For the above reason the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the One Month Notice pursuant to section 47(5) of the Act.

Therefore the Tenants' Application to set aside the One Month Notice is dismissed, without leave to reapply.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the Act. I find that the One Month Notice dated May 30, 2018, is in compliance with section 52 of the Act and for this reason I grant a two (2) day Order of Possession to the landlord.

As this tenancy is ending, I find that the Tenants' Application for repairs to be made and for the landlord to comply with the Act is no longer applicable and they are dismissed, without leave to reapply.

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Although the landlord did not apply to recover unpaid utilities on their Landlord's Application, I find that they did indicate that they were seeking these amounts in a Statement of Claim provided in their evidence, which the tenant confirmed receiving, and that the tenants are not prejudiced by its consideration. For this reason I have considered the landlord's claim for unpaid utilities.

I find that the landlord has not provided any evidence to establish how they determined utilities owing in the amount of \$133.00 per month. I find that there is nothing on the tenancy agreement, or an addendum provided, or any other signed agreement with the tenants which indicates the amount of utilities owed by the tenants each month. I further find that the landlord has not provided any utility bills with calculations to demonstrate how they arrived at the amount owing for utilities and that the landlord has not proven the actual amount required to compensate the landlord for utility charges.

For the above reasons, I dismiss the Landlord's Application to recover amounts owing for utility charges, without leave to reapply.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

I find that the tenant has not disputed the amount owing for unpaid rent and for this reason, based on the affirmed testimony of the landlord and the tenant, I find that the landlord is entitled to a monetary award of \$4,085.00 for unpaid rent owing for June 2018, July 2018 and August 2018.

Pursuant to section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord has been successful in obtaining an Order of Possession for the rental unit and obtaining a Monetary Order for unpaid rent, I allow them to recover the filing fee for their application from the tenants.

Conclusion

I dismiss the Tenants' Application in its entirety, without leave to reapply.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) or anyone on the premises 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 a Monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, to retain the tenants' security deposit and to recover the filing fee for the Landlord's Application:

Item	Amount
Unpaid June 2018 Rent	\$295.00
Unpaid July 2018 Rent	1,895.00
Unpaid August 2018 Rent	1,895.00
Less Security Deposit	-947.50
Filing Fee for this Application	100.00
Total Monetary Order	\$3,237.50

The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: August 14, 2018

Residential Tenancy Branch