



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC MNRL-S FFL

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession pursuant to sections 47 and 55;
- A monetary order for unpaid rent pursuant to section 67;
- An order to retain the security deposit pursuant to section 72;
- Authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by teleconference. The tenant attending the hearing with her daughter and representative, VC ("the tenant"). The landlord attended the hearing.

Both parties were given full opportunity to provide affirmed testimony, present evidence, cross examine the other party and make submissions. No issues of service were raised. The tenant acknowledged receipt of the Notice of Hearing and Application for Dispute Resolution.

I find the tenant was served with the Notice of Hearing and Application for Dispute Resolution pursuant to section 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to the following:

- An order for possession pursuant to sections 47 and 55;
- A monetary order for unpaid rent pursuant to section 67;
- An order to retain the security deposit pursuant to section 72;

- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The parties entered into a month-to-month tenancy agreement in 2013. Rent is \$680.00 a month payable on the first of the month.

The landlord testified the tenant paid a security deposit of \$222.50 at the beginning of the tenancy which he still holds. The tenant has not provided the landlord with written authorization to apply the deposit to outstanding rent.

The parties agreed the tenant owes rent for the previous five months (June – October 2018) in the total amount of \$3,080.00.

The landlord testified he issued a One Month Notice to End Tenancy for Cause (“One Month Notice”) which he personally served on the tenant on May 5, 2018. The tenant acknowledged service on this date. The landlord submitted a copy of the Notice in evidence.

In the One Month Notice, the landlord selected the following as reasons for issuance of the One Month Notice:

- The tenant or a person permitted on the property by the tenant has
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The effective date of the Notice is inadvertently blank.

The landlord testified the unit is infested with bedbugs and cockroaches. The Notice states the tenant has refused to allow a pest control company access to the unit. The landlord testified the tenant resides in a 126-unit building, half of which were treated for pests to date.

The tenant acknowledged refusal to answer the door to the landlord or the pest control company. The tenant's representative testified that the tenant is 75-years old and has diminished capacity particularly since the death of her husband in May 2018.

Analysis

I have reviewed all documentary evidence and testimony.

The One Month Notice does not contain an effective date. Further to section 68, I find it reasonable that the tenant would know the Notice was for a one-month period, given the title of the document. I accordingly amend the Notice to state the effective date is June 30, 2018.

I find the One Month Notice complies with Section 47(3) of the *Act*. Pursuant to sections 88 and 89, I find the tenant was served with the One Month Notice on May 5, 2018.

Section 47 of the *Act* provides that upon receipt of the One Month Notice, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

Section 47(5) states:

(5) 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 (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and (b) must vacate the rental unit by that date.

I have no evidence before me that the tenant has applied to dispute the One Month Notice within 10 days pursuant to Section 47(4) of the *Act*.

Pursuant to section 47(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice (corrected to June 30, 2018) and must vacate the rental unit by that date.

Further to the conclusive presumption in this section, I grant the landlord an order of possession effective two days after service upon the tenant.

The tenant acknowledged owing the landlord \$3,080.00 for outstanding rent. I accordingly grant the landlord a monetary order in this amount.

Further to section 72, the landlord is authorized to apply the security deposit to the monetary award. As the landlord has been successful in this application, the landlord is entitled to reimbursement of the \$100.00 filing fee.

The landlord is granted a monetary order for outstanding rent and the filing fee in the amount of **\$2,957.500** calculated as follows:

ITEM	AMOUNT
Outstanding rent (June – October 2018)	\$3,080.00
Filing fee	\$100.00
(Less security deposit)	(\$222.50)
TOTAL	\$2,957.50

Conclusion

I grant an Order of Possession in favour of the landlord effective two days after service upon the Tenant.

This order is final and binding on the parties and may be enforced in the Supreme Court of British Columbia as an order of that court should the tenant fail to comply.

I grant the landlord a monetary order in the amount of **\$2,957.50**. This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) and be 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: October 22, 2018

Residential Tenancy Branch