



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- 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;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's 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 tenant pursuant to section 72.

The landlord and the tenant attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant's assistant also attended the hearing and indicated that they would be the primary speaker for the tenant.

The tenant acknowledged receipt of the Application for Dispute Resolution (the Application) and an evidentiary package which were sent to them by way of registered mail on July 25, 2018. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the Application and evidence.

The tenant confirmed that they did not submit any evidence or make an application to dispute the One Month Notice.

The tenant acknowledged receipt of the One Month Notice which was posted to the tenant's door on July 12, 2018. In accordance with section 88 of the *Act*, I find that the One Month Notice was duly served to the tenant on July 12, 2018.

The second page of the One Month Notice was not provided at the time of the hearing. The tenant testified that they received both pages of the One Month Notice.

I instructed the landlord to provide the One Month Notice to the Residential Tenancy Branch (RTB) by the end of the business day of the date of the hearing. As the tenant confirmed that they received both pages of the One Month Notice, I find that the tenant is not prejudiced in accepting the second page of the One Month Notice as late evidence.

The landlord provided a copy of the One Month Notice in the required time.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession based on the One Month Notice?

Is the landlord entitled to a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to authorization to retain all or a portion of the tenant's security deposit?

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

Background and Evidence

The landlord and the tenant agreed that this tenancy began sometime on or about April 01, 2010, with a current monthly rent of \$1,186.32, due on the first day of each month and that there is a security damage deposit in the amount of \$500.00 which the landlord currently retains.

A copy of the signed One Month Notice dated July 09, 2018, with an effective date of September 01, 2018, was included in the landlord's evidence. The landlord cited the following reasons for the issuance of the One Month Notice:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord.*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*
- *put the landlord's property at significant risk.*

Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has or is likely to damage the landlord's property.

In the Details of Causes section the landlord has indicated that there is unpaid damage to property and threat to health and safety of others.

In addition to the above evidence, the landlord also provided:

- a copy of a previous decision with the RTB dated June 13, 2018, in which the tenant made an application for dispute resolution to contest being responsible for a damaged door. In the decision it indicates that the landlord appeared at the hearing but that the tenant did not and the tenant's application was dismissed without leave to reapply. The arbitrator heard the landlord's testimony and found that the tenant was responsible for the costs associated to the replacement of the door;
- A copy of a text message exchanged between the tenant and the landlord in which the tenant tells the landlord to take her to court on July 06, 2018, and tells the landlord that they want to get the eviction notice on July 16, 2018;
- A copy of a signed witness statement from a neighbour who indicates that the tenant's son commonly smokes cigarettes and marijuana outside in the parking area and laneway at the rental unit and uses foul language;
- A copy of a picture showing a torn by-law sign for smoking not being permitted within a certain distance of doors and windows;
- A copy of a picture of the tenant refusing the One Month Notice at the time of service;
- Two copies of pictures of the door showing the damage; and
- A copy of an invoice date March 31, 2018, in the amount of \$430.16 for the replacement of a door located in the laundry/mechanical room of the residential premises.

The landlord testified that the son regularly smokes cigarettes and marijuana inside the house which is affecting the health of the landlord who lives in an adjoining unit. The landlord stated that when confronted about the smoking, the tenant ripped a by-law sign for no-smoking in front of the landlord, spit on the floor and verbally threatened him.

The landlord submitted that the tenant's son damaged a door in laundry/mechanical room of the rental unit by shooting projectile or pellets at the door and that the tenant has not paid for the damage that their son caused. The landlord stated that he is in the laundry room area on a regular basis and only recently noticed that the damage had occurred.

The landlord stated that he is seeking an Order of Possession based on the uncontested One Month Notice and authorization to retain a portion of the tenant's security deposit to compensate for the landlord's loss in replacing the door that was

damaged. The landlord submitted that they purchased the property in 2008 and that the same door has been in place for the duration.

The assistant stated that the tenant did not dispute the One Month Notice because she did not really know what it was or what to do. The assistant further stated that the tenant told her that the landlord's father, who the tenant initially dealt with regarding tenancy issues and to whom she pays the rent, told her to give the notice back to the landlord.

The assistant submitted that the tenant's son suffers from bi-polar disorder which is why he regularly smokes marijuana but the tenant insisted that her son does not smoke in the rental unit. The tenant offered to come up with a solution with the landlord regarding the smoking.

The assistant stated that the tenant acknowledged that her son caused the damage and offered \$300.00 to the landlord for the replacement cost which the landlord rejected as they wanted the full cost for the replacement of the door. The tenant indicated that the damage to the door was very old and she feels the landlord is only acting on it now in order to obtain a higher rent for the rental unit.

Analysis

Section 47 of the *Act* establishes that a landlord may issue a One Month Notice to end a tenancy when the landlord has cause to do so. 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.

Based on the evidence and affirmed testimony, I find the tenant did not make an application pursuant to section 47(4) of the *Act* within 10 days of receiving the One Month Notice. In accordance with section 47(5) of the *Act*, due to the failure of the tenant to take this action within 10 days, I find the tenant is conclusively presumed to have accepted that the tenancy ended on September 01, 2018, the effective date on the One Month Notice. In this case, the tenant and anyone on the premises were required to vacate the premises by September 01, 2018. As the landlord confirmed that the tenant paid the monthly rent for September 2018, I find that the landlord is entitled to an Order of Possession for September 30, 2018.

Although the assistant stated that the tenant did not know what to do regarding the One Month Notice and questioned the landlord's right to issue the One Month Notice on

behalf of his father, I find that the tenant had recently made an application for dispute resolution in June 2018, naming the landlord and serving him so that he appeared at the hearing when the tenant did not. I further find that the tenant had referred to the landlord taking her to court and serving her with the One Month Notice in text messages.

In addition, even if the tenant had disputed the One Month Notice, I accept the landlord's testimony that the tenant's son threatened him and that the landlord was unreasonably disturbed by this, which the tenant did not dispute had occurred. I find that the landlord has sufficient grounds under the *Act* to issue the One Month Notice. Regarding the landlord's father telling the tenant to give the One Month Notice back, I find that the tenant did not provide any evidence that the landlord issued a formal written withdrawal of the One Month Notice.

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.

In regards to the damage done to the door, I find that it is undisputed that the actions of the tenant's son caused the damage and I find that the landlord has provided proof of the actual amount that was required to compensate for their loss.

Although *Residential Tenancy Policy Guideline #40* provides general direction on determining the general useful life of building elements, this guideline notes that, "Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances." I find that the damage caused was not under normal circumstances.

If I were to use *Policy Guideline #40* to determine exactly how much money the landlord should be compensated for their loss, it would be based on the useful life of a door being 20 years as per the policy guideline; however, I find that, based on the picture of the door, that the landlord would have received additional years of use from the door if not for the actions of the tenant's son.

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. For the above reasons I find that the tenant's offer of \$300.00 for the replacement of the door is reasonable and I grant the landlord a monetary award in the amount of \$300.00. As the landlord has been successful in this application, I allow them to recover the filing fee from the tenant.

In accordance with section 72 of the *Act*, I allow the landlord to retain a portion of the tenant's security deposit in satisfaction of the monetary award.

Conclusion

I grant an Order of Possession to the landlord effective **on September 30, 2018, after service of this Order** on the tenant. 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 72 of the *Act*, I allow the landlord to retain \$400.00 from the existing security deposit, for the cost of replacing the door and for the filing fee, and that the security deposit is now reduced to \$100.00.

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: September 18, 2018

Residential Tenancy Branch