



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC MNDCLS FFL

Introduction

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

- an Order of Possession pursuant to section 55;
- a monetary order pursuant to section 67; and
- authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 10 minutes. The phone lines were left open for the party to call in to the teleconference for the full duration of the hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the 1 Month Notice to End Tenancy for Cause dated May 20, 2018 by posting on the rental unit door on that date. In accordance with sections 88 and 90 of the Act, I find the tenant was deemed served with the 1 Month Notice on May 23, 2018, three days after posting.

The landlord said they served their application for dispute resolution dated July 25, 2018 and evidence by registered mail on July 27, 2018. The landlord submitted a Canada Post tracking receipt into written evidence in support of service. I find that the tenant was deemed served with the hearing package on August 1, 2018, five days after mailing, in accordance with sections 89 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary award as claimed?

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

Background and Evidence

The landlord gave undisputed evidence regarding the following facts. This periodic tenancy began in November, 2017. The monthly rent is \$980.00 payable on the first of each month. A security deposit of \$490.00 was paid at the start of the tenancy and is still held by the landlord.

The landlord issued a 1 Month Notice dated May 20, 2018. The reason provided on the notice is that the tenant has been repeatedly late paying rent. The landlord said that the tenant was late in paying the rent for January, February, March, April and May, 2018.

The landlord seeks a monetary award of \$450.00 for the following items:

Item	Amount
Rent Arrear November, 2017	\$10.00
Rent Arrear December, 2017	\$10.00
Late Rent Fee (x 2months)	\$50.00
Additional Occupant January, 2018	\$50.00
Monthly Parking Fee Jan-Feb, 2018	\$40.00
Additional Occupant February, 2018	\$50.00
Additional Occupants May, 2018	\$100.00
Monthly Parking Fee May, 2018	\$20.00
Additional Utilities Used	\$120.00
TOTAL	\$450.00

The landlord wrote \$455.00 in their application but confirmed that is a typographic error as the figures add up to \$450.00.

The landlord submitted the written tenancy agreement into evidence. The agreement is for one tenant and provides that an additional occupant fee of \$50.00 per individual applies. The agreement also does not include parking. The landlord testified that the tenant had additional occupants residing with them and failed to pay the additional rent. The landlord said that the tenant also used parking which is not included in the rent but is available for a fee. The landlord said that the additional number of occupants led to additional utilities consumption beyond what they expected.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant has failed to file an application for dispute resolution within the 10 days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ends on the effective date of the 1 Month Notice, June 30, 2018.

I find that the landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit, the effective date of the notice and the reasons for ending the tenancy. Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date has passed I issue an Order of Possession effective two days after service.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

I accept the landlord's undisputed evidence that there is a rent arrear and that the tenant had additional occupants residing in the rental unit and utilizing parking. I find that the tenancy agreement provides that each additional occupant is subject to an increase in the rent. Accordingly, I find that the landlord is entitled to a monetary award for the amounts claimed under those heads.

I find that there is no basis for the portion of the claim for additional utility usage. The tenancy agreement does not set out that the landlord may claim a higher amount for utility use. The additional rent charged by the landlord would reasonably be expected to cover the increase in usage. In any event the landlord has failed to provide sufficient documentary evidence to show that there has been a marked change in the use of utilities by the tenant in support of this portion of the application. Consequently, I dismiss this portion of the application without leave to reapply.

As the landlord was primarily successful the landlord may recover the \$100.00 filing fee for their application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' \$490.00 security deposit in satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service**. Should the tenant or any occupant 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.

The landlord is issued a monetary award in the amount of \$430.00. The landlord may deduct this amount from the security deposit for this tenancy reducing the amount of the deposit to \$60.00.

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 17, 2018

Residential Tenancy Branch