



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNDCL-S OPM AS CNC OLC

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession pursuant to section 55;
- a monetary order for compensation for loss or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order allowing the tenant to assign or sublet because the landlord’s permission has been unreasonably withheld pursuant to section 65; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenant were duly served with the Applications and evidence.

The tenant indicated at the beginning of the hearing that he was not making an application to allow him to sublet or assign the rental unit. The landlord indicated at the beginning of the hearing that the tenant was never issued a 1 Month Notice to End Tenancy for Cause. On this basis, these two portions of the tenant and landlord’s applications are cancelled.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession pursuant to a Mutual Agreement signed by both parties?

Is the landlord entitled to the monetary order requested?

Is the landlord entitled to recover the filing fee for their application?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

This fixed-term tenancy began on September 1, 2017. Monthly rent is set at \$1,300.00, payable on the first of the month. The landlord collected, and still holds, a security deposit in the amount of \$660.00. The tenant continues to reside in the rental unit.

The landlord testified in the hearing that the tenant signed a Mutual Agreement To End Tenancy on April 15, 2018 for the tenancy to end on August 31, 2018 at 1:00 p.m., but the tenant has failed to move out pursuant to the Mutual Agreement. The tenant admits that he had signed the Mutual Agreement, but testified that he did not have full knowledge of what he was signing, and was unaware of his options. The tenant feels deceived by the landlord, and feels the Mutual Agreement is not valid. The landlord responded that he tenant was given full disclosure before the tenant had agreed to sign the Mutual Agreement, and understood what he was signing.

The landlord testified that as a result of the tenant's failure to move out, the landlord has suffered a monetary loss in the amount of \$474.00. The landlord testified that all the tenants in the building were issued a rent increase in the amount of 4% effective September 1, 2018, with the exception of the tenant as the landlord expected this tenancy to end as of August 31, 2018. The tenant paid the September 2018 rent in the amount of \$1,352.00, to cover the rent increase.

The landlord is seeking an Order of Possession, as well as a Monetary Order for \$474.00 as outlined in the table below and in the landlord's Application:

Item	Amount
Rent Increase for September and October 2018 (\$1,300.00 x 2 * 4%)	\$104.00
Rent Differential for September and	370.00

October 2018 (\$1485-1300*2)	
Total Monetary Order Requested	\$474.00

The landlord testified that he is suffering a potential loss of rent as he has prospective tenants willing to pay monthly rent in the amount of \$1,485.00. The landlord is seeking compensation for these losses for the months of September and October 2018.

Analysis

Section 44 of the *Act* states how a tenancy may be ended:

How a tenancy ends

- 44** (1) A tenancy ends only if one or more of the following applies:
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 [*tenant's notice*];
 - (i.1) section 45.1 [*tenant's notice: family violence or long-term care*];
 - (ii) section 46 [*landlord's notice: non-payment of rent*];
 - (iii) section 47 [*landlord's notice: cause*];
 - (iv) section 48 [*landlord's notice: end of employment*];
 - (v) section 49 [*landlord's notice: landlord's use of property*];
 - (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
 - (vii) section 50 [*tenant may end tenancy early*];
 - (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
 - (c) the landlord and tenant agree in writing to end the tenancy;
 - (d) the tenant vacates or abandons the rental unit;
 - (e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

The undisputed testimony of both parties is that a Mutual Agreement to end tenancy was signed on April 15, 2018 by both parties for this tenancy to end as of August 31, 2018. The tenant has failed to move out on the effective date of this Mutual Agreement. Based on these facts, I find that this tenancy ended on the effective date of the Mutual Agreement, August 31, 2018. As the tenant has failed to move out on the effective date of the Mutual Agreement, I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**. Should the tenant 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.

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. 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 or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* 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

Section 42 of the *Act* stipulates that a notice of rent increase must be provided 3 months in advance of the increase and be in the approved form, available on the RTB website. It was undisputed by both parties that the landlord did not issue the tenant a notice of rent increase in the approved form. On this basis, I dismiss, without leave to reapply, the landlord's application for a monetary order in the amount of \$104.00. I order that the landlord return to the tenant the \$52.00 in additional rent paid for September 2018.

I note that the landlord made a monetary application for future losses for the month of October 2018. Section 67 of the *Act* only allows for actual losses the party has suffered.

As October 2018 has not yet arrived, I find the landlord's monetary claim for October 2018 premature, and this portion of the landlord's monetary application is dismissed with leave to reapply.

The landlord provided undisputed evidence at this hearing that the tenant failed to move out on the effective date of the Mutual Agreement. The landlord is making a monetary claim for loss of potential rental income in the amount of \$185.00 each for the months of September and October 2018. As noted above the landlord cannot make a claim for future losses, and accordingly the landlord's monetary claim for October 2018 is dismissed with leave to reapply. As noted above, section 67 of the *Act* only allows for compensation for actual losses, and not potential losses as the landlord is claiming for. I find that the landlord did not provide sufficient evidence to support that they had suffered any actual financial loss due to the tenant's failure to comply with the *Act*. I, therefore, dismiss the landlord's monetary claim for potential loss of rental income for September 2018 without leave to reapply.

The tenant also applied for an order for the landlord to comply with the *Act*. I am not satisfied that the tenant has provided sufficient evidence to support the landlord's failure to comply with the *Act*. On this basis, I dismiss this portion the tenant's application without leave to reapply.

As the landlord was partially successful in their application, I allow the landlord to recover half of the filing fee for this application.

Conclusion

The tenant's application to cancel the 1 Month Notice and for an order allowing the tenant to sublet are cancelled.

I find that this tenancy ended on the effective date of the Mutual Agreement, August 31, 2018. I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**.

Should the tenant 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.

The portion of the landlord's monetary application that pertains to losses for October 2018 is dismissed with leave to reapply.

I dismiss the landlord's application for monetary losses associated with September 2018, including the application for increased rent, without leave to reapply.

I dismiss the tenant's application for an order for the landlord to comply with the *Act*.

I allow the landlord to recover \$50.00 for the filing fee for this application. I order that the landlord return the \$52.00 in additional rent paid for September 2018. I issue a Monetary Order in the amount of \$2.00 in the tenant's favour under the following terms which allows for the return of the \$52.00 minus half of the filing fee.

Item	Amount
Return of Additional Rent paid for September 2018	\$52.00
Less Half of Filing Fee	-50.00
Total Monetary Order	\$2.00

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord 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: September 12, 2018

Residential Tenancy Branch