



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, OPC, OPL, OPR, FF

Introduction

This hearing was reconvened from the original hearing on September 11, 2018 scheduled in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38;
4. An Order of Possession - Section 55; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: The tenancy, under written agreement, started on June 1, 2012. Rent of \$950.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$475.00 as a security deposit. The Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent dated May 26, 2018 and the rental funds were paid within the time required.

The Landlord states that on June 30, 2018 the Landlord served the Tenant with a one month notice to end tenancy for cause (the "Notice") by sending the Notice registered mail on June 30, 2018. The Landlord submits that the Notice was issued for repeated late payment of rent. The Landlord states that the Tenant did not dispute this Notice. The Landlord states that the effective date of the Notice is August 31, 2018. I note that the Notice sets out an incorrect effective date of July 31, 2018. The Tenant states that she does not believe she received this Notice. The Tenant states that she did receive the Landlord's notice to end tenancy for landlord's use but that the notice was only a handwritten letter giving her two months to move out of the unit. It is noted that the Landlord did not provide a copy of any notice to end tenancy for landlord's use.

The Parties confirm that the Tenant has continued to pay rent past the effective date of the Notice. The Landlord states that although the Tenant has continued to deposit rent monies into the Landlord's account the Tenant was aware that the Landlord has been pursuing the end of the tenancy for some time. The Landlord states that the Tenant was "absolutely told" that the Landlord was still seeking the end of the tenancy. The Landlord refers to the letter that was attached to the Notice and provided as evidence for this hearing. The Landlord states that this letter is evidence of the longstanding intention of the Landlord in relation to the Landlord's planned use of the unit. The Tenant states that she is confused about the Landlord's intentions and that "things are not clear". The Landlord withdraws its claim for unpaid rent.

Analysis

Section 47 of the Act provides that a tenant who receives a one month notice to end tenancy for cause has 10 days to dispute the notice. Section 55(2) of the Act provides that where a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired, a landlord may request an order of possession.

Section 53 of the Act provides as follows:

- (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.
- (2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.
- (3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) *[tenant's notice: landlord breach of material term]*, 46 *[landlord's notice: non-payment of rent]* or 50 *[tenant may end tenancy early]*, if the effective date stated in the notice is any day other than the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement
 - (a) that complies with the required notice period, or
 - (b) if the landlord gives a longer notice period, that complies with that longer notice period.

Overall the Tenant's evidence was vague and evasive while the Landlord's evidence was direct and straightforward. The Landlord's evidence of service of the Notice is also supported by postal evidence. For these reasons I prefer the Landlord's evidence and find that the Tenant received the Notice. I also accept that the Tenant was never given any impression that by virtue of paying the rent the Landlord intended to reinstate the tenancy. Based on the undisputed evidence of rent being payable on the first day of each month, given the Landlord's oral evidence of sending the Notice by registered mail, and considering the postal evidence of receipt of the registered mail by the Tenant on July 11, 2018, I find that although the Notice sets out a date of July 31, 2018 this is automatically corrected to the effective date of August 31, 2018. As the Tenant did not

dispute the Cause Notice I find that the Tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the unit. The Landlord is entitled to an order of possession

As the Landlord has been successful with its claim for an order of possession I find that the Landlord is entitled to recovery of the **\$100.00** filing fee and I order the Landlord to deduct this amount from the security deposit plus zero interest of \$475.00 in full satisfaction of that claim.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I order that the Landlord retain \$100.00 from the security **deposit** and interest of \$475.00 in full satisfaction of the claim.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 11, 2018

Residential Tenancy Branch