



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord's file: OPC MNDCL-S FFL
Tenant's file: MT CNC FFT

Introduction

This hearing dealt with Applications for Dispute Resolution ("applications") by both parties seeking remedy under the *Residential Tenancy Act* ("Act"). The landlord applied to obtain an Order of Possession based on a 1 Month Notice to End Tenancy for Cause dated August 27, 2018 ("1 Month Notice"), for a monetary claim of \$985.00 for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to retain the tenant's security deposit, and to recover the cost of the filing fee. The tenant applied for more time to make an application to cancel a notice to end tenancy, to cancel the 1 Month Notice, and to recover the cost of the filing fee.

The landlord, two witnesses for the landlord who did not testify, the tenant, and an advocate for the tenant ("advocate") attended the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matters

The landlord testified that in addition to the rent owed for October 2018, the tenant has subsequently not paid for use and occupancy for November 2018. As a result, the landlord is seeking to have loss of rent for November 2018. The parties confirmed that the tenant continues to occupy the rental unit. I find that this amendment does not

prejudice the respondent tenant as the tenant would be aware that rent is due pursuant to the tenancy agreement. Therefore, I amend the application to \$1,970.00, which consists of \$985.00 for unpaid October 2018 rent and loss of November 2018 rent of \$985.00.

In addition, the parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties. Any applicable orders will be emailed to the appropriate party.

Issues to be Decided

- Should the 1 Month Notice be cancelled or upheld?
- Should the tenant be granted an extension of time to make an application to cancel the 1 Month Notice?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is either party entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on March 1, 2018 and is scheduled to end on February 28, 2019. Monthly rent of \$985.00 is due on the first day of each month. The tenant paid a \$492.50 security deposit at the start of the tenancy, which the landlord continues to hold.

The tenant confirmed having received the 1 Month Notice dated August 27, 2018 posted to his door on August 27, 2018. The tenant testified that the landlord verbally told him that "all was good" and that he did not need to dispute the 1 Month Notice. The landlord disputed that he stated "all was good" and that when the tenant asked for another chance, he replied that the tenancy has to end. The landlord also denied that he rescinded the 1 Month Notice as claimed by the tenant and denied that he told the tenant that he did not need to dispute the 1 Month Notice. The effective vacancy date listed on the 1 Month Notice was September 30, 2018 which has passed. The tenant did not dispute the 1 Month Notice until October 2, 2018.

The 1 Month Notice is signed and dated by the landlord and lists one cause on page two of the 1 Month Notice.

Analysis

Based on the documentary evidence and testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of possession – Firstly, the parties were advised during the hearing that the *Act* prevents me from extending the deadline to apply to dispute a notice to end tenancy date beyond the effective vacancy date. Section 66(3) of the *Act* states:

Director's orders: changing time limits

66

(3) The director **must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.**

[My emphasis added]

Therefore, I find I am barred at law from extending the application for dispute resolution to October 2, 2018 as that date is beyond the effective vacancy date listed on the 1 Month Notice before me of September 30, 2018.

Given the above, I find it is not necessary to consider the reason as to why the tenant did not dispute the 1 Month Notice earlier than October 2, 2018 as the *Act* prevents me from extending the timeline to dispute the 1 Month Notice in this matter to October 2, 2018 as that date is beyond the effective vacancy date of September 30, 2018. As a result, **I dismiss** the tenant's application in full, without leave to reapply as the tenant applied beyond the effective vacancy date listed on the 1 Month Notice.

As the tenant continues to occupy the rental unit and pursuant to section 55 of the *Act*, I must grant the landlord an order of possession if the 1 Month Notice complies with section 52 of the *Act*. I have carefully reviewed the 1 Month Notice and find that it complies with section 52 of the *Act*. Therefore, I grant the landlord an order of possession **effective two (2) days after service on the tenant**. I find the tenancy ended on September 30, 2018 which is the effective vacancy date listed on the 1 Month Notice.

Unpaid rent and loss of rent – During the hearing the parties discussed e-transfer payments that were sent from the friend of the tenant to the landlord for October and

November rent. The landlord stated that there was an issue with the password and that as of the time of the hearing, the landlord was unable to deposit either payment. The landlord stated that he did not pursue the tenant earlier regarding the e-transfers from the tenant's friend as the landlord did not want to reinstate the tenancy. The tenant confirmed during the hearing that both e-transfers were cancelled eventually.

Given the above, I find the landlord is entitled to **\$985.00** for unpaid October 2018 rent as claimed, and **\$985.00** for loss of November 2018 rent. Pursuant to section 72 of the *Act*, as the landlord's application was successful, I grant the landlord **\$100.00** for the recovery of the cost of the filing fee. I find the landlord has established a total monetary claim of **\$2,070.00** for unpaid rent, loss of rent and the filing fee.

I authorize the landlord to retain the tenant's entire security deposit of \$492.50 in partial satisfaction of the recovery of the cost of the filing fee. I grant the landlord a monetary order pursuant to section 67 of the *Act* for the remaining balance owing by the tenant to the landlord in the amount of **\$1,577.50**.

Conclusion

The tenant's application is dismissed with leave to reapply due to insufficient evidence.

The landlord's application is fully successful.

The landlord is granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The tenancy ended on September 30, 2018.

The landlord has established a total monetary claim of \$2,070.00 as indicated above. The landlord has been authorized to retain the tenant's entire security deposit of \$492.50 in partial satisfaction of the recovery of the cost of the filing fee. The landlord has been granted a monetary order pursuant to section 67 of the *Act* for the remaining balance owing by the tenant to the landlord in the amount of \$1,577.50. This order must be served on the tenant and may be enforced in the Provincial Court of British Columbia, Small Claims Division.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 13, 2018

Residential Tenancy Branch