



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN, MNRL, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution filed on October 16, 2018, and amended October 23, 2018, wherein the Landlord sought an Order of Possession based on a Tenant's Notice to End Tenancy, monetary compensation for unpaid rent and recovery of the filing fee.

The hearing was scheduled for teleconference at 11:00 a.m. on November 23, 2018.

Only the Landlord called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 11:33 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord testified that he served the Tenant with the Notice of Hearing and his Application on October 17, 2018 by registered mail. The Landlord stated that the package was received on October 18, 2018. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Pursuant to *Residential Tenancy Policy Guideline 12—Service Provisions* and section 90 of the *Residential Tenancy Act*, documents served by registered mail are deemed

served five days later, unless there is evidence they were received earlier. I accept the Landlord's evidence that the package was received on October 18, 2018 and I proceeded with the hearing in the Tenant's absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to monetary compensation for unpaid rent?
3. Should the Landlord recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement providing that this tenancy began June 15, 2018. Monthly rent was payable in the amount of \$975.00 and the Tenant paid a security deposit in the amount of \$400.00.

The Tenant ended her tenancy by providing written notice to the Landlord. Introduced in evidence was a copy of a letter from the Tenant to the Landlord dated September 1, 2018 indicating the Tenant's desire to end the tenancy effective September 30, 2018. The Landlord confirmed that although the letter is dated September 1, 2018 he received this letter on August 27, 2018.

In the September 1, 2018 letter, the Tenant also acknowledges she owes rent to the Landlord and writes that she will continue to drop money in the [Landlord's] mail slot until she pays him off. The Landlord testified that despite this assurance, the Tenant has not paid rent.

The Landlord confirmed that as of the date of the hearing the following amounts were owed for rent:

June 2018	\$437.50
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August 2018	\$975.00
September 2018	\$975.00
October 2018	\$487.50
November 2018	\$975.00
TOTAL OWING	\$3,850.00

He also confirmed that the amounts noted on the filed Monetary Orders Work sheet, both when he first filed and when he filed his amendment on October 23, 2018 contained numerical errors. He further confirmed that the amounts noted above were correct.

The Landlord stated that approximately 3-4 days before the end of September 30, 2018 (the date the Tenant stated she was moving out), the Landlord spoke to the Tenant and she confirmed that she was moving out at the end of the month and was simply vacuuming the rental unit.

The Landlord stated that despite these assurances, the Tenant failed to move out. The Landlord testified that on October 1, 2018 he spoke to the Tenant and at that time she became aggressive and threatening. He stated that he observed that her items were not packed as she previously claimed.

Analysis

After consideration of the Landlord's undisputed testimony, evidence and submissions and on a balance of probabilities, I find as follows.

A residential tenancy may only be ended in accordance with the *Residential Tenancy Act*; the ways a tenancy may end is set out in section 44 of the *Act* which provides as follows:

- 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.

[Emphasis added in bold]

The Landlord seeks an Order of Possession pursuant to section 44(1)(a)(i): Tenant's Notice.

I find the Tenant gave notice to end her tenancy by letter dated September 1, 2018. A tenant may not unilaterally withdraw a notice to end tenancy and as such she ended her tenancy by giving written notice to the Landlord.

Section 55(2)(a) of the *Act* provides as follows:

Order of possession for the landlord

55 ...

- (2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:
 - (a) a notice to end the tenancy has been given by the tenant;

As such and pursuant to section 55 of the *Act* I grant the Landlord an Order of Possession effective two days after service on the Tenant. Should the Tenant fail to move from the rental unit as required, the Landlord may file and enforce the Order in the B.C. Supreme Court. The Tenant is cautioned that any costs incurred by the Landlord to enforce the Order of Possession may be recoverable from the Tenant.

I accept the Landlord's evidence that the Tenant failed to pay rent as required by the tenancy agreement. Pursuant to section 26 of the *Act*, a tenant must not withhold rent, even if the landlord is in breach of the tenancy agreement or the *Act*, unless the tenant has some authority under the *Act* to not pay rent. In this situation I find that the Tenant had no authority under the *Act* to not pay rent. Further I note that in her notice to end tenancy she acknowledged owing rent to the Landlord.

I accept the Landlord's evidence that at the time of the hearing the Tenant owed **\$3,850.00** (the amounts are set out in a table earlier in this my Decision) in outstanding

rent. I find that the Landlord has established a total monetary claim of **\$3,950.00** comprised of the outstanding rent of \$3,850.00 and the \$100.00 fee paid by the Landlord for this application.

The Landlord is granted a Monetary Order pursuant to section 67 of the *Act* for the balance due of **\$3,950.00**. This Order must be served on the Tenant and may be filed in the Provincial Court (Small Claims Division) and enforced as an Order of that Court.

Conclusion

The Landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*.

The Landlord is also entitled to a Monetary Order in the amount of **\$3,950.00** for unpaid rent and recovery of the filing fee.

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: November 23, 2018

Residential Tenancy Branch