



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNDCL MNRL-S OPC**

Introduction

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

- an Order of Possession for a breach of a material term of the tenancy pursuant to section 55;
- a monetary order for unpaid rent and compensation for other money owed pursuant to section 67;
- an order allowing retention of the security deposit in partial satisfaction of a monetary order pursuant to section 67; and
- an order that the landlord recover the filing fee pursuant to section 72.

The landlord and the tenant appeared for the scheduled hearing. The tenant confirmed that she received the landlord's notice of hearing package and evidence. No documentary evidence was submitted by the tenant. Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is referenced in this decision.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed testimony, make submissions, and to question the other party on the relevant evidence provided in this hearing.

Preliminary Matter

The *Residential Tenancy Branch Rules of Procedure* allow parties to request that hearings be adjourned. The tenant sought an adjournment to the hearing due to the fact that she was using a payphone. She indicated that she might be able to use a relative's home phone located at least five minutes away; however, she could not verify

whether the relative would allow her to use the phone. The landlord was not opposed to the adjournment as long as it proceeded within the time allotted.

I determined the tenant could have made arrangements to find a suitable phone prior to the commencement of the hearing which was scheduled more than a month ago on December 12, 2018. The duration of a hearing is one hour; adjourning the hearing could cause the hearing to extend beyond one hour which would lead to the scheduling of a second hearing a number of weeks in the future. As the tenant was capable of participating in the hearing using the payphone, I denied the tenant's request for an adjournment.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Should the landlord receive compensation for lost rent and other money owed?

Is the landlord entitled to retain the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The landlord provided a copy of the tenancy agreement showing this tenancy began on January 1, 2018. The rental unit is a supportive housing property and the tenant owes rent of \$595.00 on the first day of each month. The rent of \$595.00 is a portion of the economic rent for the unit of \$1,225.00 per month. The landlord is holding a security deposit in the amount of \$557.00 which is less than half of a month's economic rent.

The landlord testified she posted the One Month Notice to End Tenancy for Cause dated September 19, 2018 ("Notice") to the tenant's door on September 19, 2018. A copy of the Notice was entered as evidence. The Notice states the tenant or a person permitted on the property by the tenant has engaged in illegal activity that adversely affects the quiet enjoyment, security, safety or physical well-being of another occupant. The tenant gave her key fob to an unknown man who has been seen by other residents in the building to be selling illicit drugs.

The landlord provided evidence to substantiate their monetary claim against the tenant. This includes a spreadsheet showing monthly rent and hydro charges together with payments made toward arrears for both. Arrears in rent and hydro as of January 21, 2019, the date of the hearing, are \$1,423.98. The landlord testified the tenant is also responsible for paying a fine for a missed pest control visit and provided an invoice for \$35.00 as proof.

The tenant confirms she received the Notice on September 19, 2018. She acknowledged that when she received the Notice, she was unsure of what to do as she

had never been through this situation before and she didn't have the money to file an application for dispute resolution. She said that she was not aware that she could seek a fee waiver. She does not dispute that she owes the full amount of money sought in the landlord's application. She testified that the man seen dealing drugs in the parking lot may be a friend of her son's; however, she could not verify this.

Analysis

Section 47(3) of the *Act* requires that a Notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

Based on undisputed testimony of the landlord, and the documents provided, I find the Notice complies with the form and content provisions of section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Sections 47(4) and (5) of the *Act* state:

(4) A tenant may dispute a Notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the Notice.

(5) If a tenant who has received a Notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and
- (b) must vacate the rental unit by that date.

The tenant testified that she received the Notice on September 19, 2018. Based on her undisputed testimony, I find the tenant was duly served the Notice on September 19, 2018 in accordance with sections 88 and 90 of the *Act*. Although the tenant had the opportunity to do so, she did not file an application to dispute the Notice within 10 days. The tenant is therefore conclusively presumed to have accepted that the tenancy ends on October 31, 2018, the effective date of the Notice, and must move out of the rental unit.

I find that the landlord is entitled to an Order of Possession, effective two days after service upon the tenant, pursuant to section 55 of the *Act*.

Monetary Order

The tenant does not dispute that she owes landlord \$1,458.98. Accordingly, I award a monetary order in the landlord's favour.

As the landlord was successful in this application, it is entitled to recover the \$100.00 filing fee from the tenant.

The landlord continues to hold the tenant's security deposit in the amount of \$557.00.

In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the security deposit in partial satisfaction of the monetary claim.

Item	Amount
Monetary Order	\$1,458.98
Filing fee	\$100.00
Less Security Deposit	(557.00)
Total Monetary Order	1,001.98

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**. Should the tenants 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.

I grant a Monetary Order in the landlord's favour for \$1,001.98. The landlord is given an Order in the above terms and the tenant must be served with this order as soon as possible.

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: January 24, 2019

Residential Tenancy Branch