



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with two applications pursuant to the Residential Tenancy Act (the “**Act**”). The landlord’s for:

- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

And tenant “JR”’s for:

- cancellation of the landlord’s One Month Notice to End Tenancy for Cause (the “**Notice**”) pursuant to section 47; and
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

The landlord and tenant “JR” attended the hearing. The landlord communicated through a translator. Tenant “JR” was represented by legal counsel. Tenant “DB” did not attend, although I left the teleconference hearing connection open until 9:45 a.m. in order to enable tenant “DB” to call into this teleconference hearing scheduled for 9:30 a.m.. The landlord and tenant “JR” were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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, tenant “JR” and I were the only ones who had called into this teleconference.

The landlord testified that tenant “DB” was served the notice of dispute resolution package via registered mail on December 28, 2018. The landlord provided the Canada

Post tracking number (which is recorded on the cover of this decision). I find that tenant "DB" was deemed served with this package on January 2, 2019, five days after the mailing of the notice, in accordance with sections 89 and 90 of the Act.

Preliminary Issue – Settlement

Pursuant to section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the attending parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both attending parties agreed to the following final and binding settlement of all issues currently under dispute:

1. Tenant "JR" will vacate the rental unit on or before March 31, 2019.
2. Tenant "JR" will pay the landlord \$800 by February 15, 2019, representing rental arrears for February 2019.
3. Tenant "JR" will pay the landlord \$800 by March 1, 2019, representing payment of March 2019 rent.
4. The landlord will provide the tenant with a receipt for each of the February 15, 2019 and March 1, 2019 payments at the time they are made.
5. The landlord will waive her claim for rental arrears for December 2018, and January 2019 against tenant "JR".

These particulars comprise the full and final settlement of all aspects of this dispute for the landlord and tenant "JR". The landlord and tenant "JR" gave verbal affirmation at the hearing that they understood and agreed to the above terms as legal, final and binding, which settle all aspects of this dispute between these two parties.

I must now address the matter of the landlord's application as against tenant "DB". As tenant "JR" has agreed to pay rental arrears, I will only examine the issue as to whether it is appropriate to grant an order of possession as against tenant "DB".

Issues to be Decided

Is the landlord entitled to an order of possession for cause against tenant "DB"?

Background and Evidence

The tenancy began on June 1, 2017 on a month-to-month basis. Rent in the amount of \$800 is payable on the first day of each month. The tenants remitted a security deposit in the amount of \$400 at the start of the tenancy, which the landlord still retains in trust. Tenant “JR” continues to reside in the rental unit. Tenant “DB” does not.

The landlord testified that the tenant was served with the landlord’s One Month Notice to End Tenancy for Cause (the “**Notice**”), dated November 22, 2018, by posting it on the rental unit’s door, with an effective date of December 31, 2018. Tenant “JR” confirmed receipt of the Notice on November 23, 2018.

The grounds to end the tenancy cited in the Notice were:

- 1) the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- 2) the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- 3) the tenant or a person permitted on the property by the tenant has put the landlord’s property at significant risk;
- 4) the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
- 5) the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

Analysis

I find that the Notice was served on the tenants in accordance with the Act.

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.

I find that tenant “DB” did not file an application to dispute the notice within 10 days. Therefore the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and must move out of the unit. As this has not occurred, I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act. As tenant “JR” and the landlord have agreed that tenant “JR” will move out on March 31, 2018, and I will grant an order of possession effective that date, as effective against both tenants.

Conclusion

To give effect to the settlement reached between tenant “JR” and the landlord, I issue the following orders:

- 1) an order of possession to the landlord as against both tenants, dated March 31, 2019; and
- 2) a monetary order requiring tenant “JR” to pay the landlord:
 - a. \$800 by February 15, 2019; and
 - b. \$800 by March 1, 2019.

Should the tenants fail to comply with the order of possession, it may be filed and enforced as an order of the Supreme Court of British Columbia.

Should tenant “JR” fail to comply with the monetary order, it may be filed and enforced as an order of the Small Claims Division of the Provincial Court of British Columbia.

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: February 7, 2019

Residential Tenancy Branch