



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC LRE FFL MNDCL MNRL OPC

Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to section 47; and,
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

This hearing also dealt with the landlord's application pursuant to the *Act* for:

- an Order of Possession for cause pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and,
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

One Month Notice was issued on March 24, 2019 and posted on tenants' door the same day. The One Month Notice has a stated move out date of April 30, 2019.

Issue(s) to be Decided

Are the tenants entitled to an order for cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to section 47?

Are the tenants entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70?

Is the landlord entitled to an Order of Possession for cause pursuant to section 55?

Is the landlord entitled to a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Is the landlord entitled to reimbursement of his filing fee pursuant to section 72?

Background and Evidence

The parties agreed that the tenancy started on May 1, 2014 with a monthly rent of \$900.00 due on the first day of each month. The tenant paid a security deposit of \$450.00. The landlord testified that he later increased the rent to \$950.00 because the tenants were “difficult”. The landlord admitted that he did not issue notices of rent increase before increasing the rent.

The landlord testified that tenants always paid the rent late. However, the landlord did not produce a ledger or bank records showing the dates of rent payments.

The tenant admitted that they were sometimes late with the rent payments, but this was not intentional. The tenant testified that they communicated with the landlord frequently to make payment arrangements. The tenant admitted that they paid the rent late for the months August 2018, September 2018 and February 2019.

The landlord also testified that the tenants breached numerous strata rules by storing junk in the garage parking lot, covering the windows with aluminum foil, letting their children spill and urinate in the hallway. The landlord requested compensation for a potential strata fine. The landlord presented a notice from the strata management company threatening to fine the landlord \$200.00 for the tenants’ conduct. The landlord did not present any evidence that the strata company has actually fined him.

The One Month Notice stated the following reasons for ending the tenancy:

- The tenant is repeatedly late paying rent.
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord’s property.
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

The landlord requested unpaid rent for April 2019 and May 2019. The landlord also requested compensation for damage to the rental unit. The landlord presented evidence that the rental unit was seen to have been in a dirty. However, the landlord has not yet obtained possession of the rental unit and he did not present any specific evidence of damage to the rental unit.

The tenant denied the landlord's allegations. She testified that they complied with strata rules as soon as they became aware of any strata violations and they did not damage the rental unit.

Analysis

A tenant may dispute a One Month Notice pursuant to section 47(4) of the *Act*. Pursuant to *Residential Tenancy Branch Rules of Procedure*, Rule 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that notice to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct.

The first ground upon which the landlord sought to end the tenancy is for repeated late payment of rent pursuant to section 47(1)(b). *Residential Tenancy Policy Guideline No. 38* states the three late payments are the minimum number of late payments to justify a notice to end tenancy for late payments of rent. Further, *Policy Guideline No. 38* states that it does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.

In this matter, the parties provided conflicting testimony on the rent payment history. However, the tenant admitted that they paid the rent late for the months August 2018, September 2018 and February 2019. On the basis of these late payments, I find that the tenants have repeatedly paid their rent late and the landlord was justified in issuing an order of possession for late payment of rent. Accordingly, I dismiss the tenant's application to cancel the landlord's One Month Notice pursuant to section 47.

I find that that the form and content of the One Month Notice does comply with section 52 of the *Act*. Accordingly, I find the landlord is entitled to an order of possession effective two days after service on the tenant pursuant to section 55 of the *Act*.

Since I have granted the landlord an order of possession, I find that the tenants' application for an order to suspend or set conditions on the landlord's right to enter the

rental unit pursuant to section 70 is moot. Accordingly, I dismiss this claim pursuant to section 62(4).

The landlord has also sought a monetary order for unpaid rent. The tenancy agreement stated that the rent was \$900.00. The landlord argued that the rent was increased to \$950.00 per month. However, the landlord admitted that he did not issue notices of rent increases pursuant to section 41 of the Act. Rather, the landlord testified that the rent was increased because the tenants were "difficult" tenant. Section 41 states that rent can only be increased in accordance with the Act. I find that the landlord's purported rent increase to \$950.00 does not comply with the Act because the landlord did not issue notice of rent increased pursuant to section 42. Accordingly, I find that the rent is \$900.00.

Based upon the terms of tenancy agreement, I find that the tenants were obligated to pay the monthly rent on time and in full each month, up to and including the rental period ending April 30, 2019.

Based upon the testimony of the parties, I find that the tenants have not paid rent for April 2019. Section 71(1) of the Act states that "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results." Pursuant to section 71(1), I find the landlord is entitled to a monetary award of \$900.00 for unpaid rent in April 2019.

I also find that the Tenant owes \$60.00 for overholding the rental unit for the period of May 1, 2019 to May 2, 2019, calculated as described below.

Section 57 of the Act defines an "overholding tenant" as a tenant who continues to occupy a rental unit after the tenant's tenancy is ended. The section goes on to say a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

In the case before me, as per the One Month Notice; I find the tenancy ended on April 30, 2019. However, I am satisfied from the landlords' undisputed testimony that the tenants continue to overhold the rental unit up to the date of the hearing on May 2, 2019.

Residential Tenancy Policy Guideline #3 states tenants are not liable to pay rent after a tenancy agreement has ended pursuant to Section 44 of the Act, however if tenants remain in possession of the premises (overholds), the tenants will be liable to pay

occupation rent on a per diem basis until the landlords recovers possession of the premises.

As the tenants remained in the unit after the tenancy ended on April 30, 2019 from May 1, 2019 to May 2, 2019, I find that the landlords are entitled to overholding rent in the amount of \$60.00 (two days at the per diem rate of \$30.00).

The landlord has also requested a monetary order for damage to the rental unit. I find that the landlord has not provided sufficient evidence to satisfy the burden of proof to establish that the tenant has damaged the rental unit. Further, the landlord has not provided adequate evidence to prove that the landlord has incurred a strata assessment for the tenant's misconduct. The evidence presented by the landlord merely stated that the strata management 'may' assess the landlord. I find that this is not sufficient evidence to prove that the landlord has sustained a loss in relation to the tenant's conduct. Accordingly, the landlord's application to obtain a monetary order for the conduct of the tenant is denied.

Based on the undisputed testimony of the landlord and the tenancy agreement, I find that the landlord holds a security deposit of \$450.000 which may be deducted from the damages owed by the tenants pursuant to section 72(2)(b) of the *Act*.

In addition, since the landlord has been generally successful this matter, I award the landlords \$100.00 for recovery of the filing fee which may also be deducted from the security deposit pursuant to section 72(2)(b) of the *Act*.

| <u>Item</u> | <u>Amount</u> |
|------------------------------|-----------------|
| April 2019 Rent | \$900.00 |
| May 2019 overholding damages | \$60.00 |
| Filing fee | \$100.00 |
| Less: security deposit | -\$450.00 |
| Total | \$610.00 |

Conclusion

I dismiss the tenants' application to cancel the One month Notice and I dismiss the tenants' application for an order to suspend or set conditions on the landlord's right to enter the rental unit.

I dismiss the landlord's application for a monetary award for damages to the rental unit.

I dismiss the landlord's application for a monetary award for compensation for strata fines issued against the rental unit.

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I grant the landlord a monetary order in the amount of **\$610.00**. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court to be enforced as an order of that Court.

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: May 06, 2019

Residential Tenancy Branch