



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDL MNRL-S OPL

Introduction

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

- an order of possession based on landlord's Two Month Notice to End Tenancy for Landlord's Use of Property pursuant to section 55;
- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- 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; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing. The landlord had full opportunity to provide affirmed testimony, present evidence, and make submissions.

The tenants did not attend the hearing. I kept the teleconference line open for the duration of the hearing to allow the landlord the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct participant code was provided to the tenants.

The landlord produced evidence showing that the Notice of Dispute Resolution was posted. In addition, tenant Q.T. called the Residential Tenancy Branch before the hearing and indicated that the tenants were aware of the hearing. As such, I find that the tenants were both sufficiently served pursuant to section 71(2)(c) of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an order of possession based on the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") pursuant to section 55?

Is the landlord entitled to a monetary order for unpaid rent and for damage to the unit pursuant to section 67?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Is the landlord entitled to recover the filing fee for this application from the tenants pursuant to section 72?

Background and Evidence

The landlord testified that the tenants have been living in the rental unit for five years. The rental unit is a separate living unit in the landlord's house. The landlord testified that the rent is \$900.00 per month, due on the first of each month and the landlord holds a \$425.00 security deposit.

The landlord testified that he issued and personally served the tenants with the Two Month Notice on March 1, 2019. The stated move out date on the notice was June 1, 2019.

The stated reason to end tenancy on the notice was that "the rental unit will be occupied by the landlord or landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)." The landlord testified that his daughter and her children were going to move into the rental unit.

The landlord testified that the tenants were granted a free month of rent for May 2019 pursuant to the Two Month Notice. However, the landlord testified that the tenants did not pay rent for June 2019. The landlord requested a monetary order for compensation for unpaid rent of \$900.00 for June 2019.

The landlord also testified that the tenants damaged the rental unit and he requested a monetary order for compensation for the damage.

Analysis

Pursuant to section 49(8)(a) of the *Act*, tenants have fifteen days after receipt of a notice to end a tenancy for landlord's use to dispute the notice. In this matter, I find that the Two Month Notice was served on the tenants by personal delivery on March 1, 2019. Accordingly, the tenants had fifteen days after the date of service of March 1, 2019 to dispute the notice, that being March 16, 2019. However, the tenants did not file an application to dispute the notice and the deadline to dispute the notice has expired.

Section 49(9) of the *Act* states that tenants who do not timely file an application to dispute a notice to end tenancy are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

Since the tenants did not timely file an application to dispute the landlord's Two Month Notice, I find that the tenants are conclusively presumed to have accepted that this tenancy would end on the effective date of the notice. The stated end date of the notice was June 1, 2019. However, section 49(2)(a(ii)) states that the effective date of the a notice to end tenancy is the last day of the month, being June 30, 2019. Accordingly, I find that the effective end date of the tenancy is June 30, 2019.

Based upon the undisputed testimony of the landlord and the terms of tenancy agreement, I find that the Tenant was obligated to pay the monthly rent in the amount of \$900.00, on time and in full each month, up to and including the rental period starting on June 1, 2019.

I find that the tenants have not paid any rent for June 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 June 2019.

Based on the undisputed testimony of the landlord, I find that the landlord holds a security deposit of \$425.00 which may be deducted from the damages owed by the tenants pursuant to section 72(2)(b) of the *Act*.

I find that the landlord's application for a monetary order for compensation for damage to the rental unit is premature since the tenants are still in possession of the property.

As such, I to that the landlord's application for a monetary order for compensation for damage to the rental unit with leave to pursuant to section 62(4) of the *Act*.

Since the landlord has been generally successful this matter, I award the landlord \$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*.

Accordingly, I find that the landlord is entitled to retain the entire security deposit pursuant to section 38 and the landlord is entitled to a monetary order of \$575.00 pursuant to section 67, calculated as follows.

<u>Item</u>	<u>Amount</u>
June 2019 rent unpaid	\$900.00
Less security deposit	-\$425.00
Filing fee	\$100.00
Total	\$575.00

Conclusion

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 tenants. If the tenants fail to comply with this order, the landlords may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is authorized to retain the entire \$425.00 security deposit.

I grant the landlords a monetary order in the amount of **\$575.00**. If the tenants fail 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: June 29, 2019

Residential Tenancy Branch