



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNDCL OPC

Introduction

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

- An order of possession pursuant to section 55;
- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the parties were both present service of documents was confirmed. The tenant confirmed receipt of the landlord's 1 Month Notice dated April 8, 2019 and application for dispute resolution dated May 7, 2019. Based on the testimonies I find that the landlord's materials were served on the tenant in accordance with sections 88 and 89 of the *Act*.

The tenant disputed receiving the landlord's amendment to their application dated May 23, 2019. The landlord testified that they served it by registered mail on that date and provided a valid Canada Post tracking number as evidence of service. Based on the evidence I find that the tenant was deemed served with the landlord's amendment on May 28, 2019, five days after mailing, in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award as claimed?

Should the landlord be authorized to recover the filing fee from the tenant?

Background and Evidence

The monthly rent for this tenancy is \$1,281.25 payable by the first of each month. A security deposit of \$625.00 was collected at the start of the tenancy and is still held by the landlord.

The landlord served the 1 Month Notice of April 8, 2019 personally on the tenant on that date. The 1 Month Notice provides the reason for the tenancy to end as the tenant is repeatedly late paying rent. The landlord gave evidence that the tenant was late in paying rent for November and December, 2018, and January and June, 2019. The tenant did not file an application to dispute the 1 Month Notice. The tenant testified that while the rent payments were late, they have been paid in full and there is no arrear as of the date of the hearing.

The landlord testified that as of the date of the hearing there is no arrear for this tenancy. The landlord gave evidence that payments accepted after the issuance of the 1 Month Notice was for use and occupancy only and indicated as such on receipts issued.

The landlord seeks a monetary award for the potential loss of rental income if the tenant does not pay monthly rent and the landlord is unable to find a new occupant for the suite.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant has failed to file an application for dispute resolution within the 10 days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ends on the effective date of the 1 Month Notice, May 31, 2019.

I find that the landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit, the effective date of the notice and the reasons for ending the tenancy. I accept the evidence that the tenant has been repeatedly late in paying rent as they have not paid rent by the date it is due on at least 3 occasions during the past 12 months. Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date has passed I issue an Order of Possession effective two days after service.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that it is premature for a monetary award as the landlord has not yet suffered loss of rental income. If the landlord suffers a loss through the tenant's continued occupancy, or if the landlord incurs costs for removing the tenants from the rental unit, the landlord is at liberty to apply for a monetary award against the tenants. I dismiss this portion of the application with leave to reapply.

As the landlord was successful in their application they are entitled to recover their filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$100.00 of the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour. The security deposit for this tenancy is reduced by \$100.00 from \$625.00 to \$525.00.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The security deposit for this tenancy is reduced by \$100.00 from \$625.00 to \$525.00.

The balance of the landlord's application is dismissed with leave to reapply.

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 17, 2019

Residential Tenancy Branch