



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL-S, OPC

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on June 3, 2019, wherein the Landlord requested an Order of Possession based on a one month Notice to End Tenancy for Cause issued on April 29, 2019 (the "Notice"), monetary compensation for loss of rent, authority to retain the security deposit and recovery of the filing fee.

Only the Landlord, and the Landlord's Agent (who also acted as an interpreter for the Landlord), called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 10:02 a.m. Additionally, 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, his Agent, and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord's Agent testified that they served the Tenant with the Notice of Hearing and the Application on June 5, 2019 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of June 10, 2019 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Landlord's agent confirmed their email addresses during the hearing as well as their understanding that this Decision and applicable Orders would be emailed to them.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to monetary compensation for unpaid rent?
3. Should the Landlord be authorized to retain the Tenant's security deposit?
4. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord's Agent testified that this tenancy began April 15, 2019. Monthly rent was payable in the amount of \$870.00 payable on the 15th of the month. The Tenant also paid a security deposit of \$500.00.

The Landlord's Agent testified that the Notice was served in person on the Tenant on April 29, 2019; this was also confirmed on the Notice. Notably, the Tenant signed the Notice as confirmation of receipt of the Notice on that date. The Landlord's Agent further testified that the Tenant failed to apply for dispute resolution.

The reasons cited on the Notice are that the Tenant has seriously jeopardized the health, safety or lawful right of another occupant or the Landlord.

The Agent testified that the Tenant smokes in the rental unit, despite the fact that the rental unit is non-smoking. The Tenant was also informed that the Landlord and the Landlord's grandchildren have severe allergies to smoking. The Landlord has also been diagnosed as suffering from asthma. The Landlord also provided in evidence medical evidence confirming he has a "pulmonary sensitivity to second hand smoke".

The Landlord's Agent testified that at that the time the Notice was personally served on the Tenant, the Landlord also informed the Tenant that the issue giving rise to the Notice was the Tenant's smoking.

In terms of the Landlord's monetary claim, the Landlord's Agent testified that the Tenant paid \$870.00 when he first moved in, as well as a \$500.00 security deposit following which he has not paid any rent; specifically, the Tenant failed to pay rent for May and June 2019 such that the amount of $\$870.00 \times 2 = \$1,740.00$.

Analysis

After consideration of the testimony and evidence before me and on a balance of probabilities I find as follows.

I find that the Tenant was served the Notice on April 29, 2019. The Notice informed the Tenant that they had 10 days in which to apply for Dispute Resolution. I accept the Landlord's evidence that the Tenant failed to make such an application.

The Notice was issued pursuant to section 47 of the *Residential Tenancy Act*; the sections relevant to this matter are as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(d) the tenant or a person permitted on the residential property by the tenant has

...

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

...

...

- (2) A notice under this section must end the tenancy effective on a date that is
 - (a) not earlier than one month after the date the notice is received, and
 - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (3) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].
- (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.

Having failed to apply to dispute the notice, and pursuant to section 47(5), the Tenant is conclusively presumed to accept that the tenancy ends and must vacate the rental unit.

I have reviewed the Notice and find that it complies with section 52 of the *Act*. While it would have been preferable for the Landlord to provide the Tenant with more details on the Notice, I accept the Landlord's Agent's testimony that the Landlord informed the Tenant at the time the Tenant was personally served the Notice that the reasons giving rise to the end of the tenancy were because the Tenant smokes in the rental unit. I further accept the Landlord's evidence that the Tenant was repeatedly informed that the rental unit was non-smoking and that the Landlord and his family have allergies to smoke. As such, I find that the Landlord has also established cause to end this tenancy as I find the Tenant has seriously jeopardized the health of the Landlord.

Pursuant to section 55 of the *Act* I find the Landlord is entitled to an Order of Possession. The effective date of the Notice has passed such that the Order will be effective two days after service on the Tenant. Should the Tenant fail to move as ordered, the Landlord may file and enforce the Order in the B.C. Supreme Court.

I accept the Landlord's evidence that the Tenant failed to pay rent for May and June such that the sum of \$1,740.00 is outstanding for rent. Pursuant to sections 26 and 67 of the *Act* find the Landlord is entitled to monetary compensation for unpaid rent.

As the Landlord has been substantially successful, I find he is entitled to recover the \$100.00 filing fee for a total monetary award of \$1,840.00.

Pursuant to sections 38 and 72 of the *Act* I authorize the Landlord to retain the Tenants' \$500.00 security deposit and I award him a Monetary Order for the balance due in the amount of **\$1,340.00**. This Order must also be served on the Tenant and may be filed and enforced in the B.C. Provincial Court as an Order of that Court.

Conclusion

The Landlord is granted an Order of Possession and monetary compensation for unpaid rent and recovery of the filing fee. The Landlord may retain the Tenant's security deposit and is granted a Monetary Order for the balance due.

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: July 12, 2019

Residential Tenancy Branch