



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FAMARK DEVELOPMENT CORPORATION and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes: Tenant CNC, MT
Landlord OPR, MNR, FF

Introduction

This hearing was convened in response to cross- applications by both parties pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows. The tenant applied August 23, 2019 to:

1. Cancel a One Month Notice to End for Cause - Section 47
2. Be permitted to more time to file their late application to cancel the landlord's Notice to End – Section 66

The landlord applied August 27, 2019 for:

1. An Order of Possession due to unpaid rent - Section 55
2. A Monetary Order for non-payment of rent - Section 67
3. An Order to recover the filing fee for this application - Section 72

Both parties attended the hearing and were given full opportunity to present all relevant evidence and relevant testimony in respect to their claims and to make relevant prior submission to the hearing and participate in the conference call hearing. Both parties acknowledged exchanging evidence. The parties were given opportunity to mutually resolve their dispute to no avail. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Preliminary matters

The tenant provided that they received a landlord's One Month Notice to End tenancy for Cause (Notice to End) on June 18, 2019 with an effective date of July 31, 2019. The tenant acknowledged they did not dispute the Notice to End within the prescribed 10 days to do so and sought to cancel the landlord's One month Notice August 23, 2019, therefore is seeking more time to dispute the Notice to End.

*It must be known that **Section 66(3)** of the Act states that the director (an Arbitrator) **must not** extend the time to make an application for dispute resolution beyond the effective date of the Notice. As a result, I must decline the tenant's application for more time in this matter and as further result the tenant's application is effectively preliminarily **dismissed** without leave to reapply.*

The hearing proceeded on the merits of the landlord's application.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy for the subject rental unit started November 01, 2018. The tenant still resides in the rental unit. Rent in the amount of \$700.00 is payable in advance on the first day of each month. The landlord explained that the entire amount of \$700.00 for rent is provided as a subsidy by a mental health agency. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$340.00 which they retain in trust. The tenant provided they received a landlord's One Month Notice to End tenancy for Cause (Notice to End) on June 18, 2019 however did not dispute the Notice to End, albeit doing so beyond the effective date of the Notice.

On August 06, 2019 the landlord gave the tenant a 10 Day Notice to End Tenancy for Unpaid Rent, claiming the tenant owed rent of \$700.00 for August 2019. The tenant acknowledged they did not satisfy the rent for the month of August 2019. The landlord testified they are claiming solely unpaid rent of \$700.00 for the month of August 2019, which the landlord testified withholding from the tenant, upon determining the tenancy ended July 31, 2019.

Analysis

On preponderance of the relevant evidence I find as follows. Having dismissed *the tenant's application* to dispute the landlord's One Month Notice for Cause, I find that **Section 55(1)** of the Act states that if I dismiss the tenant's application or uphold the landlord's Notice to End I must grant the landlord an Order of Possession if the landlord's Notice to End complies with the form and content required by **Section 52** of the Act. I find that it does therefore it is valid and I must grant the landlord an **Order of Possession**. As the effective date of the One Month Notice to End has passed the landlord is entitled to end the tenancy, in accordance with my Order, 2 days from the day they serve the tenant the Order of Possession. Having ended the tenancy on the merits of the One month Notice to End for Cause, I decline to consider the validity of the landlord's subsequent 10 Day Notice to End Tenancy for Unpaid Rent.

In respect to the landlord's monetary claim I find that the tenancy ended on July 31, 2019 and that thereafter the tenant became an "overholding tenant" as prescribed and defined by **Section 57** of the Act. **Section 57(3)** of the Act states that 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.

I accept the landlord's monetary claim in this matter representing the equivalent of one month's rent in the amount of **\$700.00**. The landlord is also entitled to recovery of the filing fee. *Calculation for a Monetary Order* follows. The security deposit will be off-set from the award made herein.

Compensation for overholding rental unit from July 31, 2019 onward.	\$700.00
Landlord's filing fee for the cost of application	\$100.00
<i>Less tenant's security deposit in trust</i>	<i>-\$340.00</i>
Total Monetary Award / landlord	\$460.00

ORDERS

I grant an Order of Possession to the landlord **effective 2 days** from the day it is served on the tenant. The tenant must be served with this Order of Possession. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I Order that the landlord retain the security deposit of \$340.00 in partial satisfaction of their claim and **I grant** the landlord an Order under Section 67 of the Act for the balance due of **\$460.00**. If the tenant does not satisfy this Order the Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenant's application is **dismissed**, without leave to reapply.

The landlord's application is granted, and they are given Orders in the stipulated terms.

This Decision is final and binding.

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: October 22, 2019

Residential Tenancy Branch