



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDL-S, MNRL-S, FFL

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") to obtain an order of possession based on an undisputed 1 Month Notice to End Tenancy for Cause dated June 22, 2019 ("1 Month Notice"), for a monetary order for unpaid rent or utilities, for damage to the unit, site or property, to retain all or part of the tenant's security deposit, and to recover the cost of the filing fee.

An agent for the landlord DP ("agent") and the owner of the rental unit GL ("owner") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent and owner were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding ("Notice of Hearing"), application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence were served on the tenant by personal service at the rental unit address on August 14, 2019 at 11:15 a.m. and was witnessed by third party, KM. Based on the undisputed testimony before me, I accept that the tenant was sufficiently served as of August 14, 2019 as claimed by the agent.

Preliminary and Procedural Matters

The agent testified that since filing their application, the tenant paid August 2019 rent late and has failed to pay September and October 2019 rent and that the tenant continues to occupy the rental unit. As a result, the agent and owner requested to

amend the application to include rent owed for September and October of 2019. I find that this request to amend the application does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, I amend the application from \$825.00 to \$1,100.00, which consists of \$550.00 for September 2019 loss of rent, and \$550.00 for October 2019 loss of rent pursuant to section 64(3) of the *Act*.

The agent and owner confirmed their email addresses during the hearing. They also confirmed that they are not aware of the tenant's email address. The agent and owner were advised that the decision and any related orders will be emailed to the landlord and agent. The decision will be sent by regular mail to the tenant.

Issues to be Decided

- Is the landlord entitled to an order of possession based on an undisputed 1 Month Notice?
- Is the landlord entitled to a monetary order for unpaid rent or loss of rent under the *Act*?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy agreement began on January 1, 2016. The tenant paid a security deposit of \$275.00 at the start of the tenancy, which has accrued \$0.00 in interest. The landlord continues to hold the tenant's security deposit.

The agent confirmed service of the 1 Month Notice by personal service on the tenant at 2:00 p.m. in the afternoon on June 22, 2019. A Proof of Service document supporting the agent's testimony was submitted in evidence. The 1 Month Notice included an effective vacancy date of July 31, 2019, and indicated two causes on page two of the 1 Month Notice, the first cause of which is repeated late payment of rent. The agent affirmed that the tenant did not dispute the 1 Month Notice and failed to vacate the rental unit by July 31, 2019 or any day since that date. The agent stated that the landlord is seeking an order of possession as the tenant continues to occupy the rental unit and that the landlord has suffered a loss of rent for September and October of 2019.

The agent completed the Details of Cause portion of the 1 Month Notice and the owner testified that he signed the tenant's copy before the tenant was served with the 1 Month Notice. The owner testified that the tenant was late paying rent for the following months, including but not limited to:

1. April 2018
2. May 2018
3. June 2018
4. April 2019
5. August 2019

Analysis

Based on the undisputed documentary evidence of the landlord and undisputed testimony provided by the agent and the owner during the hearing, and on the balance of probabilities, I find the following.

Order of possession – Section 47 of the *Act* states that if the tenant once served with the 1 Month Notice does not dispute the 1 Month Notice within 10 days of receiving the 1 Month Notice, the tenant is conclusively presumed to have accepted the 1 Month Notice and must vacate the rental unit on the effective vacancy. In the matter before me, the tenant did not dispute the 1 Month Notice and as a result, I find the tenancy ended on the effective vacancy date, which was July 31, 2019. As the tenant continues to occupy the rental unit, I find the tenant is overholding the rental unit. Therefore, pursuant to section 55 of the *Act*, I grant the landlord an order of possession effective **two (2) days** after service on the tenant. I have reviewed the 1 Month Notice and find that it complies with section 52 of the *Act*. I also note that the tenant was late paying rent over three times, which is all that is required to find that the 1 Month Notice is valid.

Monetary order – Section 26 of the *Act* applies and states that a tenant is responsible to pay the rent in accordance with the tenancy agreement on the date that it is due. In the matter before me, the \$550.00 monthly rent was due on the first day of each month. I find the tenant breached section 26 of the *Act* by failing to pay the rent as claimed by the landlord. Therefore, pursuant to section 67 of the *Act*, I find the landlord has met the burden of proof and that the tenant owes **\$1,100.00 in loss of rent**, comprised of \$550.00 owing for September 2019, and \$550.00 owing for October 2019. I note that the tenant has not vacated the rental unit.

In addition, as the landlord's application was successful and pursuant to section 72 of the *Act*, I grant the landlord **\$100.00** for the recovery of the cost of the filing fee under the *Act*. Given the above, I find the landlord's total monetary claim is **\$1,200.00** comprised of loss of rent and the filing fee as described above.

As the landlord continues to hold the tenant's security deposit of \$275.00, which has accrued no interest, I authorize the landlord to retain the tenant's entire \$275.00 security deposit in partial satisfaction of the landlord's monetary claim of \$1,200.00. I find the tenant continues to owe the balance to the landlord in the amount of **\$925.00**. Accordingly, I grant the landlord a monetary order pursuant to section 67 of the *Act* in the amount of \$925.00.

Conclusion

The landlord's application is fully successful. The tenancy ended July 31, 2019. The tenant has been overholding the rental unit since July 31, 2019.

The landlord is granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has been authorized to retain the tenant's full security deposit of \$275.00 to offset the total amount of \$1,200.00 owing by the tenant to the landlord. I grant the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of \$925.00.

The decision and orders will be emailed to the landlord. The decision will be sent by regular mail to the tenant. The landlord must serve the orders on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 4, 2019

Residential Tenancy Branch