



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYLINE LIVING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC MNRLS FFL

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) to obtain an order of possession based on an undisputed 1 Month Notice to End Tenancy for Cause dated August 21, 2019 (1 Month Notice), for a monetary claim for unpaid October 2019 rent, and to recover the cost of the filing fee.

The tenant, two agents for the landlord RP and AP (agents) and a senior property manager for the landlord RS (property manager) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally and ask questions about the hearing process. A summary of the testimony is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The tenant confirmed that the landlord served them with the Notice of Dispute Resolution Proceeding, application and documentary evidence. The tenant did not serve the Residential Tenancy Branch (RTB) with any documentary evidence in response to the landlord's claim. I find the tenant sufficient served according to the Act.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties were advised that decision would be emailed to the parties. Any orders will be emailed to the appropriate party for service on the other party.

Issue 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 of unpaid rent for October 2019?
- What should happen to the tenant's security deposit and pet damage deposits (combined deposits) 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 fixed-term tenancy began on June 15, 2018 and reverted to a month to month tenancy after June 30, 2019. Monthly rent was originally \$1,505.00 per month and the parties confirmed that the monthly rent increased on July 1, 2019 to \$1,542.62 per month and is due on the first day of each month. The tenant paid combined deposits, which total \$1,252.50.

The agent testified that the 1 Month Notice was posted to the tenant's door on August 21, 2019. The tenant did not dispute that they received the 1 Month Notice within three days of August 21, 2019, which was August 24, 2019. The tenant did not formally apply to dispute the 1 Month Notice. The effective vacancy date listed on the 1 Month Notice was September 30, 2019, which has passed. The 1 Month Notice indicates two causes and the Details of Cause refers to an attached Schedule A, and the Schedule A is attached to the 1 Month Notice and sets out the details of the two causes. The tenant confirmed having received the 1 Month Notice and the attached Schedule A.

The tenant stated that they filed an application regarding repairs in the unit, but did not apply to dispute the 1 Month Notice.

Regarding October 2019 rent, the agent stated that rent for October 2019 was eventually paid in full; however, rent for November 2019 has not been paid in full and the landlord is still seeking an order of possession. The agent confirmed they have no reinstated the tenancy at any time since filing their application or issuing the 1 Month Notice.

The agent stated that the landlord would be willing to accept an order of possession for November 15, 2019 at 1:00 p.m.

Analysis

Based on the documentary evidence of the parties and the testimony provided by the parties during the hearing, and on the balance of probabilities, I find the following.

Order of possession - I find that the tenant did not dispute the 1 Month Notice within 10 days after being served with the 1 Month Notice, which according to section 90 of the Act would be August 24, 2019 as that is three days after the 1 Month Notice was posted to the tenant's door. The effective vacancy date of the 1 Month Notice is listed as September 30, 2019, which has passed. Section 47 of the Act indicates that when a tenant does not dispute a 1 Month Notice, they are conclusively presumed to have accepted that the tenancy ends on the effective vacancy date. Therefore, I find the tenancy ended on September 30, 2019. I also note that the 1 Month Notice complies with section 52 of the Act.

Section 55 of the Act applies and states:

Order of possession for the landlord

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

- (a) **the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and**
- (b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[Emphasis added]

Based on the above, I grant the landlord an order of possession pursuant to section 55 of the Act effective **November 15, 2019 at 1:00 p.m.** I have used this date as the agent confirmed that this date would be acceptable versus a two-day order of possession.

Regarding October 2019 rent, I dismiss that portion of the landlord's claim without leave to reapply, as the parties agreed that October 2019 was eventually paid by the tenant. As the landlord's application was mostly successful, I authorize the landlord to retain **\$100.00** from the tenant's combined deposits of \$1,252.50, in full satisfaction of the recovery of the cost of the filing fee pursuant to section 72 of the Act. I find the tenant's

combined deposits are now \$1,152.50 effective immediately, pursuant to section 62(3) of the Act.

Conclusion

The landlord's application is mostly successful. The tenancy ended on September 30, 2019.

The landlord has been granted an order of possession effective November 15, 2019 at 1:00 p.m. 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 \$100.00 from the tenant's combined deposits, in full satisfaction of the recovery of the cost of the filing fee pursuant to section 72 of the Act. The tenant's new combined deposits balance is \$1,152.50, effective immediately.

The decision will be emailed to the parties and the order of possession will be emailed to the landlord for service on the tenants.

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: November 8, 2019

Residential Tenancy Branch