



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order of Possession for non-payment of rent
- b. A monetary order in the sum of \$1289.79 for unpaid rent and damages
- c. An Order to retain the security deposit.
- d. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the one month Notice to End Tenancy was served on the Tenant by posting on June 30, 2019. Further I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing was sufficiently served on the tenant on or about September 16, 2019. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order of Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a tenancy agreement that provided that the tenancy would start in June 2016. The present rent is \$1040 per month payable in advance on the first day

of each month. The tenant had previously paid a security deposit of \$450. However, the tenant's wife vacated the rental unit and \$225 was returned to her.

The grounds set out in the one month Notice to End Tenancy was that the "tenant is repeatedly late paying the rent." The landlord provided evidence that the tenant paid the rent late on more than 30 occasions prior to the issuance on the one month Notice to End Tenancy.

The tenant gave the following evidence:

- There was an oral agreement that the tenant could pay the rent prior to the 5th of the month and later.
- He has paid the rent on time since he received the one month Notice. The landlord accepted the payment without indicating it was for "use and occupation only" and has thus reinstated the tenancy.
- He acknowledged that he did not file an application to dispute the one month Notice to End Tenancy. He testified he had previously been served eviction notices which the landlord subsequently took back. At all times he told the landlord that he was disputing the Notice to End Tenancy.
- The land is owned by a school and the landlord pays rent to the school. Thus the Residential Tenancy Act does not have jurisdiction and this matter should be decided in the courts.

The landlord responded testifying that he has had an agreement with the school for the last 20 years. He owns the house which was moved onto the property with the consent of the school. He pays taxes and insurance. The school has told him they want to have more control on who lives in the house (including requiring police background checks) but that has not happened as yet.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order of Possession for the following reasons:

- The Residential Tenancy Act provides that where a Tenant is served with a one month Notice to End Tenancy the tenant has 10 days to file a dispute failing which he is conclusively deemed to have accepted the end of tenancy and must vacate the rental unit. This is found in sections 47(3), (4) and (5) provides as follows:

(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.

- An arbitrator does not have the legal authority to extend the time limit to apply to dispute a Notice to End Tenancy if that application was filed after the effective date of the Notice to End. Policy Guideline #36 includes the following:

“Notice to End

Application for Arbitration Filed After Effective Date

An arbitrator may not extend the time limit to apply for arbitration to dispute a Notice to End if that application for arbitration was filed after the effective date of the Notice to End.

For example, if a Notice to End has an effective date of 31 January and the tenant applies to dispute said Notice to End on 1 February, an arbitrator has no jurisdiction to hear the matter ***even where the tenant can establish grounds that there were exceptional circumstances***. In other words, once the effective date of the Notice to End has passed, there can be no extension of time to file for arbitration.

The Notice to End Tenancy was served on the Tenant by posting on June 30, 2019. The effective date of the Notice to End was August 1, 2019. It is unclear whether the tenant received it on that day or after. Even if it was determined that it was received by the tenant in early July, the Act self corrects a Notice to End Tenancy and in this case it would set the end of tenancy to August 31, 2019. As of the date of the hearing the Tenant has not filed an Application for Dispute Resolution to dispute the Notice.

- I do not accept the submission of the Tenant that the landlord has reinstated the tenancy. It was clear to all parties that the landlord was proceeding to seek an Order of Possession. Further, I determined the tenant was late paying the rent on more than 3 occasions prior to the issuance of the Notice. Policy Guideline #38 provides that 3 late payments is sufficient for the grounds to end a tenancy on the basis of repeatedly late paying the rent.

In summary I determined the landlord is entitled to an Order of Possession. The landlord served a one month Notice to End Tenancy on the Tenant. The landlord used the approved form. The Tenant(s) have not made an application to set aside the Notice to End Tenancy and the time to do so has expired. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Accordingly, I granted the landlord an Order of Possession. However, as the rent has been paid for November I set the effective date of the Order of Possession for November 30, 2019.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Analysis - Monetary Order and Cost of Filing fee:

With respect to each of the landlord's monetary claims I find as follows:

- a. I determined the landlord is entitled to \$689.79 for utilities the landlord paid on behalf of the Tenant. The tenant testified he does not dispute this claim. The landlord provided documentary proof to support the amounts.
- b. I dismissed the landlord's claim of \$500 for the cost of furniture and other personal belongings that the tenant disposed of without the consent of the landlord. The landlord failed to provide sufficient evidence the items were damaged and failed to provide evidence of the quantum of the alleged loss.

I granted the landlord a monetary order in the sum of \$689.79 plus the sum of \$100 in respect of the filing fee for a total of \$789.79.

Security Deposit:

I determined the security deposit held by the landlord amounts to \$225. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$564.79.

Conclusion:

I granted an Order of Possession effective November 30, 2019. I ordered that the Landlord shall retain the security deposit of \$225. In addition I further ordered that the Tenant(s) pay to the Landlord(s) the sum of \$564.79.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on both parties.

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: November 18, 2019

Residential Tenancy Branch