



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNDL-S OPC

Introduction

This hearing dealt with the landlord's application pursuant to the Residential Tenancy Act (the *Act*) for:

- an Order of Possession for Cause, pursuant to sections 47 and 55 of the *Act*;
- a Monetary Order for compensation for damage or loss, pursuant to section 67 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The tenant confirmed receipt of the landlord's Notice of Dispute Resolution Proceeding package and evidence, served in person to the tenant on October 18, 2019. The landlord confirmed receipt of the tenant's evidence served by Canada Post registered mail on November 5, 2019.

Based on the undisputed testimonies of the parties, I find that the documents for this hearing were served in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Unrelated Claims

The landlord's application included an unrelated monetary claim in addition to the landlord's claim for an Order of Possession and to recover the filing fee for this application.

Rules of Procedure states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the landlord's monetary claim is not related to the priority application to obtain an Order of Possession. Therefore, the landlord's monetary claim is dismissed with liberty to reapply subject to any applicable limits set out in the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession on the basis of the One Month Notice to End Tenancy for Cause dated September 27, 2019?

Is the landlord entitled to recover the cost of the filing fee from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into evidence. The parties confirmed the following details pertaining to this tenancy:

- This tenancy began June 2015 as a fixed-term tenancy. The parties entered into consecutive fixed-term tenancy agreements with the most recent agreement beginning June 1, 2017 and set to expire May 31, 2018 at which point the tenancy continued as a month-to-month tenancy.
- Current monthly rent of \$906.00 is payable on the first of the month.
- At the beginning of the tenancy, the tenant paid a security deposit of \$425.00 which continues to be held by the landlord.

The landlord testified that the tenant was personally served with the One Month Notice to End Tenancy for Cause dated September 27, 2019 (herein referred to as the "One Month Notice") on the same day. The tenant confirmed this testimony.

The landlord submitted a copy of the One Month Notice into evidence for this hearing which states an effective move-out date of October 31, 2019, with the following boxes checked off as the reasons for seeking an end to this tenancy:

Tenant or a person permitted on the property by the tenant has (check all boxes that apply):

- *put the landlord's property at significant risk.*

Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:

- *damage the landlord's property.*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord attached a separate sheet providing the “Details of Cause” to the One Month Notice.

The tenant testified that she was aware of the option to dispute the notice but did not dispute the notice and accepted that the tenancy would end as of the effective vacancy date on the One Month Notice.

On October 9, 2019, there was a fire at the rental unit which rendered the rental unit uninhabitable. As such, although the tenant no longer resided in the rental unit, the tenant’s personal belongings continued to occupy the rental unit, rental property and outbuilding, along with any undisposed recyclables and garbage.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

In this case, the tenant acknowledged receipt of the One Month Notice on September 27, 2019 and confirmed that she did not file an application to dispute the notice.

Section 47(5) of the *Act* states that a tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice to end tenancy if the tenant fails to make an application for dispute resolution in accordance with section 47(4) of the *Act*.

Accordingly, I must consider if the landlord is entitled to an Order of Possession under section 55 of the *Act*, based on the fact the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice as provided by section 47(5) of the *Act*. In this case, the effective vacancy date of the notice was October 31, 2019.

For an Order of Possession to be granted to a landlord, sections 47(3) and 55 of the *Act* require that a landlord’s notice to end tenancy for cause must comply with the form and content requirements of section 52 of the *Act*.

In considering this matter, I have reviewed the landlord’s One Month Notice and find that it is compliant with the requirements of section 52 of the *Act*.

As I have made a finding that the tenant is conclusively presumed to have accepted the tenancy ended on the effective vacancy date of the One Month Notice, and that the One Month Notice

complies with section 52 of the *Act*, the landlord must be granted an Order of Possession. Therefore, I issue an Order of Possession for the landlord. I have provided November 30, 2019 as the effective date of the Order of Possession since the parties entered into a settlement of a separate issue and as such this Order of Possession is dated to coincide with the terms of the settlement agreement between the parties explained in the following paragraphs of this Decision.

As the landlord was successful in her application for an Order of Possession, I find that the landlord is entitled to recover the cost of the \$100.00 filing fee from the tenant. Given that the landlord continues to hold the security deposit, I order that the landlord retain \$100.00 from the security deposit in full satisfaction of the recovery of the filing fee for this Application for Dispute Resolution.

The parties discussed the matter of the removal of the tenant's personal property left behind at the rental property. Although this was not a matter before me as part of the Application for Dispute Resolution, pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle a dispute, and if the parties settle a dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issue of removal of the tenant's personal property, turned their minds to compromise and achieved a resolution of this issue.

Both parties voluntarily agreed to the following final and binding settlement of the issue pertaining to the removal of the tenant's property and any undisposed recyclables and garbage:

1. This tenancy will end at 5:00 p.m. on November 30, 2019, by which time the tenant and any other occupants will return vacant possession of the rental unit to the landlord.
2. To return vacant possession to the landlord, the tenant agreed that all of her personal belongings and property, and any unwanted, undisposed of recyclables and garbage, will be removed from within the rental unit, from the grounds of the rental property and from within the out-building on the rental property, with the exception of any charred personal property or belongings within the rental unit.
3. Should the tenant fail to comply with the agreed upon above-noted terms of this settlement, the tenant will be considered to have abandoned her personal property, and the landlord may hire a junk/garbage disposal service to remove the tenant's abandoned property. A Monetary Order in the amount of \$1,000.00 is issued to the landlord and may only be enforced if the landlord is required to pay for a junk/garbage disposal service and therefore is entitled to recover the cost of that service.
4. The end date of this tenancy is November 30, 2019 for the purposes of addressing the security deposit at the end of the tenancy.

Conclusion

I grant an Order of Possession to the landlord effective 5:00 p.m. on November 30, 2019.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue a Monetary Order in the landlord's favour for \$1,000.00 dated November 30, 2019 to be served on the tenant ONLY if the tenant fails to abide by the terms set out in this settlement agreement. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 19, 2019

Residential Tenancy Branch