



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S OPC**

Introduction

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

- A monetary order for damages to the rental unit and authorization to retain a security deposit pursuant to sections 67 and 38; and
- An Order of Possession for Cause pursuant to sections 47 and 55.

The landlord was represented at the hearing by his agent, LM ("landlord"). The tenant attended the hearing. As both parties were in attendance, service of the Notice of Dispute Resolution Proceedings package was determined. The tenant acknowledges receiving the landlord's package and stated he had no issues with timely service of documents. Both parties were prepared to hear the merits of the landlord's claim.

Issue(s) to be Decided

Should the landlord's One Month Notice To End Tenancy for Cause be upheld?
Is the landlord entitled to a monetary order for damages to the rental unit and authorization to retain a portion of the security deposit?

Background and Evidence

The landlord provided the following testimony. The month to month tenancy began on August 1, 2018 with rent originally set at \$800.00 per month. A security deposit in the amount of \$400.00 was collected in installments, but as of the date of today's hearing it is fully paid.

The landlord testified that there was a disturbance on the night of November 24, morning of November 25, 2018. The tenant and his girlfriend had a fight, were disturbing other occupants of the building and the landlord who also lives in the building. The landlord sent the tenant a text message about the noise, but after getting a

disturbance call from another occupant of the building, she contacted the police. The girlfriend was escorted from the building by the police at 1:30 a.m.

On June 28, 2019, the landlord came home from work and saw glass on the grounds from a broken window. She was advised by 3 separate tenants in the building that the tenant or his girlfriend had broken their window. When she spoke to the tenant about it, the tenant said his girlfriend would clean it up but never did. The landlord called a window company to replace the window and submitted an invoice for \$450.44 to have it replaced. During the hearing, the parties agreed that the tenant has been paying the landlord in installments for the damage to the window and the remainder to be paid by the tenant is \$215.00.

The landlord alleges another incident on July 8, 2019 whereby the police were called to another domestic disturbance at night between the tenant and his girlfriend. Despite being told to leave by the police, the tenant invited the girlfriend back to the rental unit at 5:00 a.m. where they continued to fight.

On July 29, 2019, the landlord sent the tenant a One Month Notice To End Tenancy for Cause by registered mail. The tenant acknowledges receiving it on July 31, 2019. The Notice has an effective date of August 31, 2019 and the reason for ending the tenancy is:

- The tenant or a person permitted on the property by the tenant has
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord testified that since serving the tenant with the Notice, she has accepted rent payments for the months of August, September, October and November. She testified that on each of the rent receipts, she included the statement that the money was accepted "for use and occupancy only". The tenant verified that was noted on the receipts.

The tenant provided the following testimony. When he got the Notice, he didn't know he could dispute it. He had thought about doing so, but his 'mind doesn't work good' and he 'forgets things'. The tenant did not file an application to dispute the Notice.

The tenant acknowledged there were only 2 incidents of fighting with his girlfriend. He testified that his girlfriend/wife is on medication that causes her to not think straight. It is only when she stops taking the medication that she causes fights. She is now attending counselling sessions to control her behaviour and is enrolled in treatment for illicit drugs.

He assures the landlord and I that there will be no further disturbances caused by him or his girlfriend/wife.

Analysis

I find the tenant received the Notice on July 31, 2019 in accordance with section 89 of the *Act*. The tenant did not file an application to dispute the Notice.

Sections 47(3)(4) and (5) of the *Act* state:

(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.

Based on undisputed testimony of the landlord, and the documents provided, I find that the 1 Month Notice complies with the form and content provisions of section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

I find the grounds for ending the tenancy provided by the landlord are reasonable, given the tenant's admission that he and his girlfriend had fought. The fighting was loud enough to disturb other tenants in the building as well as the landlord in the middle of the night. More importantly, although the tenant had the opportunity to do so, he did not file an application to dispute the Notice within 10 days, by August 10, 2019. Since the tenant did not file for dispute resolution, he is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must move out of the unit. Since the effective date on the Notice has passed, I grant the landlord an Order of Possession effective 2 days after service upon the tenant.

The parties agreed the tenant is responsible for compensating the landlord for the broken window and that there is \$215.00 remaining to be paid. Pursuant to section 67 of the *Act*, I award the landlord a monetary order in the amount of \$215.00.

The landlord continues to hold the tenant's security deposit in the amount of \$400.00. In accordance with the offsetting provisions of section 72, I order the landlord to retain \$215.00 of the tenant's security deposit in full satisfaction of the monetary order.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants 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.

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 28, 2019

Residential Tenancy Branch