



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPC MNDC MNSD FF / CNC

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for cause pursuant to section 55;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord’s One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47.

The hearing was conducted by conference call. All named parties attended the hearing. No issues were raised with respect to the service of the respective applications and evidence on file.

Preliminary Issue – Scope of Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to request an order of possession for cause, I am exercising my discretion to dismiss the remainder of the issues identified in the landlord's application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

Issues

Should the One Month Notice be cancelled? If no, is the landlord entitled to an order of possession for cause?

Is the landlord entitled to recover its filing fee?

Background and Evidence

The tenancy began on November 1, 2014 and the current monthly rent is \$874.33 payable on the 1st day of each month. The tenant paid a security deposit of \$375.00 at the start of the tenancy which the landlord continues to hold.

On September 17, 2019 the landlord served the tenant with the One Month Notice by posting a copy to the door of the rental premises. The effective date of the One Month Notice was October 31, 2019.

The tenant filed an application to dispute the One Month Notice within 10 days of receipt of the Notice as required under the Act. The landlord subsequently filed its own application requesting an order of possession.

During the hearing, the tenant advised that he vacated the rental unit the day before the hearing.

The landlord was still seeking an order of possession as they had no prior knowledge of the tenant vacating and could not confirm in the hearing that he had in fact vacated.

The tenant did not object to the landlord being granted an order of possession.

Analysis

The tenant advised that he has vacated the rental unit and did not object to the landlord being granted an order of possession.

The landlord is hereby granted an order of possession effective, immediately.

The tenant did not vacate the rental unit as per the effective date of the One Month Notice but rather filed an application to dispute the Notice. The landlord subsequently filed its own application seeking an order of possession and other remedies. Rather than awaiting the outcome of the hearing, the tenant voluntarily vacated the unit the day before the hearing. Accordingly, I find the tenant responsible to bear the cost of the landlord's filing fee. The landlord is entitled to recover the \$100.00 filing fee paid for this application. This amount can be retained from the tenant's security deposit.

Conclusion

I grant an Order of Possession to the landlord effective immediately. Should the tenant 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: December 02, 2019

Residential Tenancy Branch