



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vandy Developments Ltd.
and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes

OPC, FFL, MNDCL-S

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order for possession under a One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to sections 47 and 55;
- Authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Tenant attended as agent for the landlord (“the landlord”). The landlord was given the opportunity to make submissions as well as present affirmed testimony and written evidence.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 19 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant were provided.

As the tenant did not attend the hearing, the landlord testified that the tenant was properly served with the Notice of Hearing and Application for Dispute Resolution pursuant to the Act by sending the Notice of Hearing to the tenant by registered mail on April 4, 2020; the landlord sent the evidence package by registered mail on May 5, 2020, thereby effecting service five days later, on May 10, 2020 pursuant to section 90. The landlord provided the tracking numbers for the registered mail referenced on the first page.

Further to the landlord's testimony and supporting evidence, I find the landlord served the tenant in accordance with sections 89 and 90 of the Act on May 10, 2020.

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- An order for possession under a One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to sections 47 and 55;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The landlord provided uncontradicted testimony as the tenant did not attend the hearing.

The landlord testified that the tenancy began on April 1, 2018 for monthly rent of \$920.00 payable on the first of the month. The landlord submitted a copy of the tenancy agreement which required the tenant to pay for parking, cable and late fees.

The tenant provided a security deposit of \$450.00 at the beginning of the tenancy which the landlord holds. The tenant has not provided written authorization to the landlord to

apply the security deposit to outstanding rent.

The landlord testified that on February 14, 2020, a parcel delivered to the building addressed to another occupant was illegally taken from the common mail room by the tenant's mother who resided in the unit. The police attended, investigated, seized the parcel from the tenant's mother, and returned it to the lawful owner. The landlord testified that many occupants of the building expressed concern about the breach of privacy of mail delivery.

The landlord also testified that the tenant has disturbed other occupants of the building by falsely claiming the tenant's mother, who resides in the unit, has COVID-19; the tenant has also created noise, and generated disturbances of various kinds which upset the quiet enjoyment of other occupants.

Accordingly, the landlord issued the One Month Notice claiming as follows:

1. the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
2. the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord submitted a copy of the Notice which is dated February 28, 2020. The effective date is March 31, 2020. The Notice provided that if the tenant did not dispute the Notice, the tenant was presumed to have accepted the Notice and must move out by the effective date, March 31, 2020.

The landlord testified the Notice was personally served by the landlord on February 28, 2020 on the tenant's mother, an occupant of the unit, who signed the form and acknowledged service. The landlord submitted a signed and witnessed copy of a Proof of Service form.

The landlord also sent a copy of the Notice by mail to the tenant and submitted as evidence a copy of the cover letter dated February 28, 2020.

The tenant did not file a dispute within ten days of service of the One Month Notice.

The landlord provided a monetary order worksheet and documentation in support of the landlord's testimony that the tenant is currently in arrears under the agreement. The

landlord's claim is summarized as follows:

ITEM	AMOUNT
Outstanding rent – April 2020	\$920.00
Outstanding rent – May 2020	\$920.00
Outstanding Cable – April and May 2020 (\$160.00 x 2)	\$320.00
Outstanding parking fee – April and May 2020 (\$16.00 x 2)	\$32.00
Late fees – April and May 2020 (\$25.00 x 2)	\$50.00
Monetary Award Requested	\$2,242.00

The landlord requested authorization to apply the security deposit to the monetary award and reimbursement of the cost of the filing fee as follows:

ITEM	AMOUNT
Monetary Order Requested (above)	\$2,242.00
Reimbursement filing fee	\$100.00
(Less security deposit)	(\$450.00)
TOTAL CLAIM	\$1,892.00

The tenant continues to occupy the unit.

The landlord requested an Order of Possession and a Monetary Order.

Analysis

I have reviewed the landlord's materials and find that the landlord has met the burden of proof on a balance of probabilities with respect to the second ground for issuance of the Notice and all other claims. The landlord's materials were credible, well-prepared and comprehensive.

I find that the landlord has met the burden of proof that the tenant the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being or another occupant

or the landlord. I accept the landlord's testimony, well supported by documentary evidence, that an occupant of the unit unlawfully took mail from the building's mailroom that was intended for someone else in the building.

I find the Notice complied with section 52 and was properly served on the tenant as testified by the landlord and acknowledged by the tenant's mother, occupant.

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

(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 the landlord's testimony and the Notice before me, I find that the tenant was served with an effective Notice. Although the tenant had the opportunity to do so, the tenant did not file an application to dispute the Notice within 10 days or attend this scheduled hearing.

As the tenant did not dispute the Notice, the tenant is conclusively presumed to have accepted the Notice and must move out by the effective date, March 31, 2020. I find the tenant continues to occupy the unit.

I find the landlord is entitled to an Order of Possession based on the above grounds. I accordingly grant the landlord an Order of Possession effective two days after service on the tenant.

Monetary Award

I accept the landlord's testimony as supported by documentary evidence that the tenant is in arrears of rent, cable, parking and late fees of **\$2,242.00** according to the agreement between the parties. Accordingly, I find the landlord has met the burden of proof on a balance of probabilities with respect to this aspect of the claim and I grant the landlord a monetary award in this amount.

Filing Fee

As the landlord has been successful in this application, I grant the landlord a monetary award in the amount of \$100.00 for reimbursement of the filing fee.

Security Deposit

Pursuant to section 72, I grant the landlord authorization to apply the security deposit of \$450.00 to the monetary award.

Summary

In summary, I grant the landlord a Monetary Award calculated as follows:

ITEM	AMOUNT
Outstanding rent – April 2020	\$920.00
Outstanding rent – May 2020	\$920.00
Outstanding Cable – April and May 2020 (\$160.00 x 2)	\$320.00
Outstanding parking fee – April and May 2020 (\$16.00 x 2)	\$32.00
Late fees – April and May 2020 (\$25.00 x 2)	\$50.00
Monetary Award	\$2,242.00

In conclusion, I grant the landlord a Monetary Order calculated as follows:

ITEM	AMOUNT
Monetary Award (above)	\$2,242.00
Reimbursement filing fee	\$100.00
(Less security deposit)	(\$450.00)
TOTAL CLAIM	\$1,892.00

Conclusion

I grant the landlord an Order of Possession effective two days after service on the tenant. This order must be served on the tenant. If the tenant fails to comply with this

order, the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I grant the landlord a monetary order in the amount of **\$1,892.00**. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) to be 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: May 25, 2020

Residential Tenancy Branch