



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNRL, MNDCL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking:

- An Order of Possession for the rental unit based on an undisputed Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”);
- Recovery of unpaid rent;
- Compensation for monetary loss or other money owed; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by an agent for the Landlord (the “Agent”) and the Tenants, all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Tenants acknowledged receipt of the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, notice of the hearing, and the Landlord’s documentary evidence, by registered mail on April 9, 2020, and raised no concerns regarding service or the acceptance and consideration of the Landlord’s documentary evidence. The Tenants did not serve any evidence on the Landlord or submit any evidence to the Residential Tenancy Branch (the “Branch”) for consideration in this matter.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts, evidence, and issues in this decision.

At the request of the Agent copies of the decision and any orders issued in favor of the Landlord will be emailed to them and the Landlord at the email addresses provided in

the Application. At the request of the Tenants, copies of the decision will be emailed to them at the email addresses provided in the hearing.

Preliminary Matters

Amendment

During the hearing the Agent sought to amend the Application to include outstanding rent for May 2020, as rent for May is now outstanding. Rule 4.2 of the Rules of Procedure states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. As a result, I have amended the application to include additional outstanding rent for May 2020.

The Agent stated that the Landlord also wishes to withdraw their claim for \$976.85 in compensation for hotel and storage costs as they do not yet know when the Tenants will vacate the rental unit and would rather re-file this claim at a future date once the total amount of these costs are known. As there were no objections from the Tenants, I granted the Agents request and the hearing proceeded based only on the Landlord's claims for possession of the rental unit, outstanding rent for February, April and May of 2020, and recovery of the filing fee.

Adjournment Request

The Tenants stated that although they have a significant amount of documentary evidence, they were unable to submit it to the Branch or serve it on the Landlord due to recent and significant illnesses, restrictions due to COVID-19, and the lack of a printer. As a result, I assessed whether an adjournment was necessary or appropriate in the circumstances in order for the Tenants to have a full opportunity to respond to the Landlord's Application.

In assessing whether an adjournment was necessary or appropriate, I had the Tenants provide me with testimony regarding the type of documentary evidence they wished to have considered in the hearing. In doing so it was apparent to me that this evidence relates to claims by the Tenants that have not yet been filed with the Branch, not evidence relating to the findings I must make as a result of the Landlord's Application. As a result, I declined to grant an adjournment and the hearing proceeded as scheduled based on the Application and documentary evidence already before me, and the testimony of the parties in the hearing. I provided the Tenants with contact information

for the Branch and information on how to file an Application in relation to their claims, should they wish to do so.

Issue(s) to be Decided

Is the Landlord entitled to possession of the rental unit?

Is the Landlord entitled to compensation for unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The Agent stated that the Landlord wants to move back into the rental unit and as a result, the Two Month Notice was posted to the door of the rental unit by them on January 16, 2020, in the presence of a witness, and submitted a Proof of Service and several photographs in support of this testimony. The Tenants stated that it was not received by them until approximately January 23, 2020, as it was not taped or affixed to the door and blew into the snow. The Tenants pointed to the Agents photograph showing that it was placed in the crack between the door and frame and stated that the Tenant M.H. only found it behind the garbage can a week later when he was shoveling and that the package was very wet from the snow.

In any event, the Tenants acknowledged that they did not dispute the Two Month Notice as it was their understanding that the current state of emergency prevented evictions and that they would be able to raise any concerns regarding the Two Month Notice and its validity in this hearing.

There was no dispute between the parties that rent has not been paid for February, April and May of 2020, and that rent for March was not due or paid pursuant to section 51 (1) of the *Act*, as the Tenants were served with the Two Month Notice.

Although the Tenant M.H. stated that they replaced defective locks to the rental unit last fall, at a cost of \$60.00-\$80.00, they acknowledged that they have been compensated for these costs by the Landlord. During the hearing the Tenants also confirmed that they have not overpaid a security deposit, pet deposit, or rent, that they do not have an Order from the Branch authorising them to withhold or reduce rent or any other unpaid Monetary Order from the Branch against the Landlord, and are not owed any

compensation for emergency repairs completed and paid for by them in compliance with section 33 of the *Act*.

Although the Tenants mentioned several financial and other claims they wish to bring against the Landlord in relation to the tenancy, there was no Application for Dispute Resolution before me from the Tenants and the Tenants confirmed that they have not yet filled an Application for Dispute Resolution in relation to these claims. As a result, I advised the Tenants that I could not hear any of their own claims during the hearing and provided them with information on how to contact the Branch and file a claim.

Analysis

Based on the documentary evidence and testimony before me from the Agent, I am satisfied that the Two Month Notice was posted to the door of the rental unit on January 16, 2020. Although the deeming provision under section 90 (c) of the *Act* states that documents attached to a door or other conspicuous place at the rental unit are deemed to be received three days later, if not earlier received, the Tenants argued that the Two Month Notice blew off the door as it was not properly affixed, and that as a result, it was not located until January 23, 2020, approximately one week later. Residential Tenancy Policy Guideline 12 states that the deeming provisions may be rebutted where fairness requires this to be done, and having reviewed the photographic evidence from the Agent, I agree that the Two Month Notice was not properly or securely affixed to the door of the rental unit, and was instead stuck between the door and the frame. I can also see from the Agent's photograph that it was winter and that there was snow on the ground. As a result, I accept the Tenant's testimony that the Two Month Notice blew off the door into the snow and that it was not located until January 23, 2020, and I find that they were therefore served on that date.

The Two Month Notice in the documentary evidence before me is signed by the Agent and dated January 16, 2020, has an effective date of March 31, 2020, states the address for the rental unit and the following ground for ending the tenancy: The unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse). The Two Month Notice is also in writing on the approved Branch form.

Section 49 (8) of the *Act* states that a tenant may dispute a Two Month Notice by filing an Application for Dispute Resolution with the Branch within 15 days of being served with the notice, and in the hearing the Tenants acknowledged that they did not file an Application for Dispute Resolution seeking to cancel the Two Month Notice. Although

the Tenants stated that they did not file an Application for various reasons, including serious health issues, the pandemic, and a lack of understanding regarding the requirement to dispute the notice, section 49 (9) of the *Act* is clear that a tenant who receives and does not dispute a notice to end tenancy within the allowable timeframe, is conclusively presumed to have accepted that the tenancy is ended in accordance with the effective date of the notice and is required to vacate the rental unit by that date. As a result, I find that the Tenants were conclusively presumed to have accepted that the tenancy was ending on March 31, 2020, the effective date of the Two Month Notice. Based on the above, and as the Two Month Notice complies with section 52 of the *Act*, I therefore find that the Landlord is entitled to an Order of Possession for the rental unit pursuant to section 55 (2) (b) of the *Act*.

As the effective date of the One Month Notice has passed, and the parties agree that no rent has been paid for February, April, and May of 2020, the Order of Possession will be effective two (2) days after service on the Tenants.

Section 26 (1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. In the hearing the parties agreed that rent in the amount of \$1,246.00 is due on the first day of each month, and that rent has not been paid for February, April, and May of 2020. Although the Tenants have many concerns about the manner in which the Landlord maintains the property, and the way the Landlord has treated them and other tenants through their tenancies, ultimately I am satisfied based on their testimony in the hearing that they did not have a right under the *Act* to deduct any rent for February, April, and May of 2020. As a result, I find that the Landlord is entitled to \$3,738.00 in outstanding rent.

As the Landlord was successful in their Application, I grant them recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*. Pursuant to section 67 of the *Act*, the Landlord is therefore entitled to a Monetary Order in the amount of \$3,838.00.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two (2) days after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, this Order

may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of **\$3,838.00**. 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 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: May 27, 2020

Residential Tenancy Branch