



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPM MNDC MNSD FF

Introduction

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

- an order of possession based on a mutual agreement to end tenancy 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.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the application and evidence submissions on file.

Issues

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary award for compensation for loss?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The parties originally entered a one-year fixed term tenancy beginning October 1, 2018. The lease was extended for an additional year in October 2019 and was set to expire September 30, 2020. The monthly rent at that time was \$3500.00. The tenant paid a security deposit of \$1750.00 at the start of the tenancy.

In February 2020 the tenant was issued a One Month Notice to End tenancy for breaching the lease by subletting the unit as an Airbnb. The tenant did not dispute the notice and the effective date of the Notice was March 30, 2020.

Prior to the effective date of the Notice, the tenant requested the landlord permit her stay and to continue to sublet the unit as an Airbnb. The tenant offered the landlord an additional \$500.00 per month.

The landlord agreed to the tenants request on a trial basis and on February 29, 2020 the parties entered into a three-month fixed term tenancy beginning March 1, 2020 and ending May 30, 2020. At the same time, the parties entered into a mutual agreement to end tenancy with an effective date of May 30, 2020.

The landlord is requesting the following:

- an order of possession pursuant to the mutual agreement to end tenancy
- \$4500.00 for unpaid rent for May 2020 plus an NSF/Administration fee in the amount of \$85.00 for a bounced cheque for this month.
- \$4500.00 for loss of rent due to the tenant overholding for June 2020.
- \$793.00 for storage expenses incurred by the landlord's son.
- \$1900.00 for the one-month rent paid by the tenant's son for temporary accommodation.

The landlord submits the tenant failed to vacate as per the mutual agreement and that the owner's son had to find temporary accommodation and incur storage expenses as a result of the tenant's overholding. The landlord submitted a copy of the NSF cheque as proof of rent not being paid. The landlord also submitted a receipt for storage expenses and a copy of the one month lease the tenant's son entered.

The tenant argues that she had a one-year lease and the 3-month agreement was only an addendum to her existing lease to allow Airbnb. The tenant submits that the landlord's agent advised her the lease would continue beyond the 3 months if everything went well with the Airbnb trial. The tenant argues she only agreed to the extra \$1000.00 per month to be allowed to Airbnb the unit. The tenant argues the June outstanding rent should revert to the original \$3500.00 as the three-month period lapsed. The tenant submits she was told the landlord himself was going to occupy the unit and not the landlord's son; therefore, she should not be responsible for his losses.

In reply, the landlord submits that the parties entered into a mutual agreement to end tenancy effective May 30, 2020 which is binding and that it is inconsequential who moves into the unit. The landlord submits that the tenant was told if all went well they would consider extending the lease beyond May 30, 2020 but nothing was in writing or agreed to beyond this date. Further, the landlord submits it was the tenant herself that requested to revert back to the original \$3500.00 agreement as her Airbnb business was allegedly slow due to the Covid-19 pandemic. The landlord submits that the landlord's wife and son's tenancy was also ended by their landlord; therefore, they decided to move-in to the rental unit rather than renting another place.

Analysis

Pursuant to section 44(1)(c) of the Act, a tenancy ends if the landlord and tenant agree in writing to end the tenancy. Pursuant to section 55(2)(d) of the Act, a landlord may request an order of possession of a rental unit if the landlord and tenant have agreed in writing that the tenancy has ended.

I find the evidence supports that the parties entered a new three-month lease on only a trial basis after the previous lease had ended as a result of the tenant being issued a One Month Notice for breaching that lease. At the same time as entering into the 3-month fixed term tenancy, the tenant and landlord entered into a mutual agreement to end tenancy effective May 30, 2020. I find this agreement to be binding and the landlord was entitled to possession of the rental unit effective this date.

In the hearing, the tenant stated she was not objecting to the landlord being granted an order of possession and agreed to vacate by June 30, 2020. The landlord was agreeable to this date. The landlord is granted an Order of Possession pursuant to section 55 of the Act, effective June 30, 2020.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

As per section 7 of the *Residential Tenancy Regulation* the landlord may charge an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent if provided for in the tenancy agreement.

The tenant did not dispute not paying May 2020 rent. The landlord is awarded \$4500.00 plus \$25.00 which is the maximum chargeable by a landlord for a returned cheque.

Due to the tenant overholding, I find the landlord suffered a loss as claimed for \$4500.00 for June 2020 rent, \$793.00 for storage and \$1900.00 for rent expenses incurred by the landlord's son. I find the June 2020 rent loss to be \$4500.00 not \$3500.00 as argued by the tenant. The latest lease entered into by the parties was at an amount of \$4500.00.

The landlord is entitled to a total monetary award of \$11,718.00 (\$4500.00 + \$4500.00 + \$25.00 + 793.00 + 1900.00)

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$11,818.00.

The landlord continues to hold a security deposit of \$1750.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$10,068.00.

Conclusion

I grant an Order of Possession to the landlord effective **June 30, 2020**. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$10,068.00. 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: June 12, 2020

Residential Tenancy Branch