



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNRL-S, FFL

Introduction

In this dispute, the landlord seeks the following:

1. an order of possession for landlord's use of property, pursuant to sections 49 and 55 of the *Residential Tenancy Act* (the "Act");
2. a monetary order for compensation, pursuant to section 67 of the Act; and,
3. recovery of the filing fee, pursuant to section 72 of the Act.

The landlord applied for dispute resolution on June 10, 2020 and a dispute resolution hearing was held July 7, 2020. The landlord, a witness for the landlord, and the tenant attended the hearing, and they were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. No issues of service were raised by the parties.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of this application.

Issues

1. Is the landlord entitled to an order of possession?
2. Is the landlord entitled to compensation?
3. Is the landlord entitled to a monetary order for the filing fee?

Background and Evidence

The tenancy started on December 1, 2013 and monthly rent is \$900.00. Rent is due on the first of the month. The tenant paid a security deposit of \$350.00, which the landlord holds in trust. There was no written tenancy agreement submitted into evidence.

On February 27, 2020, the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"). The Notice indicated that, unless the tenant disputed the Notice, the tenancy would end on April 30, 2020. The Notice was served by being posted on the door; a copy of a Proof of Service document, along with a copy of the Notice, were submitted into evidence. The landlord's witness confirmed that they were present when the Notice was posted to the tenant's door.

The tenant did not dispute the Notice but did not vacate the rental unit on April 30, 2020, and remains in the rental unit, a coach house.

The landlord testified that the tenant paid rent for May 2020, and then did not pay rent again until June 30, 2020. For both payments the landlord issued a use and occupancy only receipt. He explained that he assumed the payment made on June 30 was for July's rent, and not simply a late payment of rent for June. Either way, the tenant owes rent for either June or July 2020.

In his testimony and submissions, the tenant was primarily concerned with whether the landlord would cut off the internet. He wanted to know whether the landlord was going to cut off internet because he does much of his job on the internet.

Regarding rent, the tenant testified that he is "not in arrears except for this month." It is the tenant's position that rent for June was paid, but that July has not yet been paid. He also argued that the landlord is increasing the rent and overcharging, though he did not elaborate or provide any evidence of this increase or overcharge. Finally, he briefly spoke about the Notice, saying that the landlord's family "doesn't even live there," and that there are other individuals living in the main house on the property.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Claim for Order of Possession

The landlord issued the Notice under section 47(3) of the Act which states that “A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.”

Section 47(8) and (9) of the Act states:

(8) A tenant may dispute

(a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or

(b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), 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.

In this dispute, the landlord gave the Notice on February 27, 2020. The tenant received the Notice but did not make an application for dispute resolution. Therefore, the tenant is conclusively presumed to have accepted that the tenancy ended on April 30, 2020 and was required to vacate the rental unit by that date. He did not.

Section 55(2)(b) of the Act states that

A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

Given that the tenant did not dispute the notice and the time for making any such application has long since expired, the landlord is entitled to an order of possession.

I grant the landlord an order of possession, which is issued in conjunction with this Decision. Given the non-urgent nature of the Notice and taking into consideration the difficulty of finding accommodations during the state of emergency, this order of possession will not take effect until July 31, 2020 at 1:00 PM. The tenant must vacate the rental unit by this date and time.

Claim for Compensation

As the tenancy ended on April 30, 2020, the tenant became an “overholding tenant” thereafter. Section 57(1) of the Act defines an overholding tenant to mean “a tenant who continues to occupy a rental unit after the tenant’s tenancy is ended.” Moreover, section 57(3) of the Act states that a “landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

Whether the tenant paid rent late for June 2020 or early for July 2020 is immaterial. Either way, the tenant owes the landlord compensation in the amount of \$900.00, as this is the amount that he would have paid under the tenancy agreement.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for compensation in the amount of \$900.00.

Claim for Filing Fee

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was successful, I grant his claim for reimbursement of the filing fee of \$100.00.

A total monetary award of \$1,000.00 is therefore granted to the landlord. As the tenancy ended on April 30, 2020, I order, pursuant to section 38(4)(b) of the Act that the landlord may retain the tenant’s security deposit of \$350.00 in partial satisfaction of the award. A monetary order of \$650.00 for the balance is granted to the landlord.

Conclusion

I hereby grant the landlord an order of possession, which must be served on the tenant and is effective at 1:00 PM on July 31, 2020. If necessary, this order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I hereby grant the landlord a monetary order in the amount of \$650.00, which must be served on the tenant. Should the tenant fail to pay the landlord the amount owed, the landlord may file, and enforce, the order in the Provincial Court of British Columbia (Small Claims 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 Act.

Dated: July 7, 2020

Residential Tenancy Branch