



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPN, MNDCL-S, MNDL-S, MNRL-S, FFL

Introduction

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

- an order of possession pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and 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 his filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was initially served with the notice of hearing package by Canada Post Registered Mail on July 11, 2020, but that the package was returned as "moved" by Canada Post. The landlord issued a notice of inspection and attended the rental unit to discover that the tenant was still occupying the rental unit. The landlord attempted to serve the package to the tenant in person, but that tenant refused to accept it. The landlord posted the notice of hearing package and the submitted documentary evidence on the rental unit door on July 15, 2020. The landlord's spouse, P.H. provided witness testimony confirming service by posting it to the rental unit door. On this basis, I find that the tenant was sufficiently served as per sections 88 and 89 of the Act. Despite not attending the hearing, I find that the tenant is deemed sufficiently served as per section 90 of the Act on July 18, 2020.

Extensive discussions with the landlord over a period of 92 minutes resulted in the landlord withdrawing the monetary portion of his claim. The landlord stated that he would proceed only on his request for an order of possession and recovery of the filing fee. As such, no further action is required for the landlord's monetary claim.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?
Is the landlord entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord provided undisputed affirmed evidence that on July 4, 2020, the landlord served the tenant with the 1 Month Notice dated July 4, 2020 by posting it to the rental unit door. The 1 Month Notice sets out an effective end of tenancy date of August 10, 2020 and that it was being given as:

- the tenant is repeatedly late paying rent;
- the tenant has allowed an unreasonable number of occupants in the unit;
- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
- the tenant has engaged in illegal activity that has, or is likely to:
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The written details of cause state:

(Tenant did not pay fine by strata & continues to get complaints from other residents)

March 14, 2020- Notice of Infraction, Dog Feces

March 16, 2020- Notice of Infraction, Dog Feces in Parkade

April 24, 2020- Notice of Chargeback, Carpet Cleaning Dog Feces

May 30, 2020- Notice of Infraction, Noise

June 11, 2020- Notice of Infraction, Excessive late night noise

Along with all these complaints from other residents living here, the tenant has also not paid rent for the months April, May, June + July 2020

Tenant also has other people living with him.

[reproduced as written]

During the hearing the landlord clarified that a clerical error had occurred in that the filed application states that the 1 month notice was served on July 3, 2020 instead of the clarified July 4, 2020 date. The landlord confirmed that the 1 month notice was served on July 4, 2020. The effective end of tenancy date was also clarified by the landlord in that it states August 10, 2020, but one months notice served on July 4, 2020 posted to the rental unit door deems it served on July 7, 2020 3 days later. The landlord confirmed in his direct testimony that monthly rent is payable on the 1st day of each month. The Act provides for the correction of the 1 month notice's (not a 30 day notice) effective end of tenancy date to August 31, 2020. The landlord confirmed his understanding.

Extensive discussions with the landlord resulted in the landlord clarifying that there has been no illegal activity by the tenant other than a suspicion by the property manager that there are frequent visitors to the rental unit; there has been no repeatedly late payments of rent as clarified with the landlord that the unpaid rent is in reference to the "affected rent" for the period during the state of emergency which is prohibited at this time; there has not been an unreasonable number of occupants in the rental unit as the landlord states that there is only 1 additional occupant to the rental unit for a total of 2 occupants. As these issues were clarified with the landlord, these three reasons for cause are dismissed.

The landlord stated on the final reason for cause that there has been repeated complaints of excessive noise made to the property manager. The landlord stated that the onsite property manager has received numerous excessive noise complaints that the tenant is having parties late into the night disturbing other occupants of the rental building. The landlord references the submitted copies of the 5 notices issued by the Strata. Three for allowing the tenant's dog feces on the property without cleaning it up; Two for noise complaints for which a Notice of Infraction was issued. The landlord stated that despite this the tenant continued to receive notices from the period March 14, 2020 to June 11, 2020.

Analysis

Section 47 of the Act states that a landlord who issues notice to end tenancy for cause may end the tenancy if the tenant or a person permitted by the tenant has significantly interfered with or unreasonably disturbed another occupant.

In this case, I accept the undisputed affirmed evidence of the landlord that the tenant was served with the 1 month notice dated July 4, 2020 posted to the rental unit door.

I also accept the undisputed affirmed evidence of the landlord that multiple notice(s) from the property management were issued regarding excessive noise and strata bylaw infractions.

Pursuant to Section 47 (5) if a tenant who has received a notice under this section does not make an application for dispute within the allowed 10 days of receiving it is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate. I find on this basis that the tenant has not filed an application for dispute of the notice. As such, the landlord is entitled to an order of possession for the effective end of tenancy date of August 31, 2020.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted an order of possession.
The landlord is granted a monetary order for \$100.00.

These orders must be served upon the tenant. Should the tenant fail to comply with these orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court and enforced as orders of those courts.

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: August 13, 2020

Residential Tenancy Branch