



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S, OPC, MNDL-S, FFL**

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.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 32 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 documents to the tenant by registered mail on July 10, 2020, thereby effecting service five days later, on July 15, 2020, pursuant to section

90. The landlord provided the tracking number 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 July 15, 2020.

The landlord withdrew his claims under section 67 with a request to reapply. Pursuant to the landlord's request, the claims under section 67 are dismissed with leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to the following:

- 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 March 1, 2020 for monthly rent of \$2,050.00 payable on the first of the month. The tenant provided a security deposit of \$1,025.00 at the beginning of the tenancy which the landlord holds. The landlord submitted a copy of the tenancy agreement.

The landlord testified that in the tenancy period preceding the landlord's application, the tenant was late paying rent and/or failed to pay the full rent every month. Accordingly, the landlord issued the One Month Notice claiming that the tenant was repeatedly late paying rent. The Notice included several other grounds for issuance which are not relied upon by the landlord at the hearing.

The Notice was served by posting to the tenant's door on June 26, 2020, thereby effecting service on June 29, 2020 requesting that the tenant vacate by July 31, 2020. The landlord submitted a copy of the Notice which is in the RTB form. The landlord also submitted a witnessed Proof of Service form in the RTB form.

The landlord testified that the tenant did not file a dispute within ten days of service of the One Month Notice. 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, July 31, 2020.

The tenant continues to occupy the unit.

The landlord requested an Order of Possession and authorization to deduct the filing fee of \$100.00 from the security deposit.

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 all claims.

I accept the landlord's uncontradicted evidence and find that the landlord has met the burden of proof that the tenant was repeatedly late paying rent as claimed in the One Month Notice. I find the Notice complied with section 52 and was properly served on the tenant as testified by the landlord. I find the tenant did not submit a dispute to the One Month Notice and as the tenant did not dispute the Notice, the tenant is presumed to have accepted the Notice and must move out by the effective date, July 31, 2020.

Section 40 of the *Act* allows a landlord to end a tenancy by giving notice if the tenant is repeatedly late paying rent. The section states as follows:

40 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(a) the tenant is repeatedly late paying the rent; ...

Residential Tenancy Policy Guideline # 38 – Repeated Late Payment of Rent states that three late payments are the minimum number to justify a notice under these provisions. The Guideline states as follows:

The Residential Tenancy Act and the Manufactured Home Park Tenancy Act both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions.

I find the tenant was required under the terms of the tenancy agreement to pay rent on the first of the month and failed to do three times in the 3-month period preceding the application.

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.

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 which I authorize the landlord to deduct from the security deposit held by the landlord.

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.

The landlord's application under section 67 is dismissed with leave to reapply.

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 14, 2020

Residential Tenancy Branch