



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on July 10, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a One Month Notice for Cause dated January 25, 2020 (the "One Month Notice");
- a monetary order for damage or loss;
- a monetary order for unpaid rent;
- a monetary order for compensation; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 9:30am on August 17, 2020 as a teleconference hearing. Only the Landlord appeared and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 28 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord and I were the only persons who had called into this teleconference.

The Landlord testified the Application and documentary evidence package was served to the Tenant by registered mail on July 10, 2020. The Landlord submitted a registered mail receipt confirming the mailing. Based on the oral and written submissions of the Applicants, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on July 15, 2020, the fifth day after the registered mailing.

Preliminary Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an

Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending based on the One Month Notice. The Landlord's request for a monetary order is dismissed with leave to reapply.

The Landlord was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession based on a One Month Notice for Cause, pursuant to Section 47 and 55 of the *Act*?
2. Is the Landlord entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord testified that the tenancy was meant to begin on October 15, 2019, however, the Tenant did not pay rent in full until October 19, 2020, at which point the Tenant moved into the rental unit. Currently rent in the amount of \$1,350.00 is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$575.00 as well as a portion of the pet damage deposit in the amount of \$400.00 which the Landlord continues to hold. The Landlord stated that the Tenant continues to occupy the rental unit.

The Landlord testified that the Tenant has breached several portions of the tenancy agreement including repeatedly late paying rent in October, November and December 2019. The Landlord stated that the Tenant has not paid any rent to the Landlord during the Covid-19 state of emergency.

The Landlord stated that the Tenant has disregarded her request for the Tenant to clean up clutter in the yard, remove uninsured vehicles from the property, use the designated garbage area, as well as having pets and not paying the full pet damage deposit as requested. The Landlord stated that the Tenant has damaged a baseboard heater in the rental unit which has created a safety risk.

The Landlord subsequently served the Tenant with a One Month Notice for Cause dated January 25, 2020 with an effective vacancy date of February 26, 2020 by posting it to the Tenant's door on January 25, 2020. The Landlord's reasons for ending the tenancy on the One Month Notice are;

“Tenant is repeatedly late paying rent”

“Tenant or a person permitted on the property by the tenant has significantly jeopardized the health and safety or lawful right of another occupant or the landlord and put the landlord’s property at significant risk”

“Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.”

“security or pet deposit was not paid within 30 days as required by the tenancy agreement.”

The Landlord is seeking an order of possession as well the return of the filing fee paid to make the Application.

Analysis

Based on the uncontested documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a landlord may end a tenancy by giving notice to end the tenancy for cause.

The Residential Tenancy Policy Guideline 38 states 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.

The Landlord served the Tenant with a One Month Notice to End Tenancy for Cause dated on January 25, 2020 with an effective vacancy date of February 26, 2020, by posting it to the Tenant’s door. Based on the oral and written submissions of the Landlord, and in accordance with sections 88 and 90 of the Act, I find that the Tenant is deemed to have been served with the One Month Notice on January 28, 2020, the third day after the notice was posted.

Section 47(4) of the Act states that a Tenant may dispute a Notice by making an Application for Dispute Resolution within 10 days after the date the Tenant receives the Notice. Section 47(5) of the Act states that if a Tenant who has received a Notice does not make an Application for Dispute Resolution in accordance with Subsection (4), the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit by that date.

As I have found that the Notice was deemed served on the Tenant on January 28, 2020 and that there is no evidence before me that the Tenant applied for Dispute Resolution

within 10 days or applied for more time to cancel the Notice, I find that the Tenant is conclusively presumed to have accepted the end of her tenancy on the corrected effective date of the notice February 29, 2020.

I accept that the Tenant paid rent late in October, November and December 2019. As such, I find that the Landlord has sufficient cause to end the tenancy. I find that the Landlord is entitled to a two-day Order of Possession which must be served on the Tenant. If the Tenant does not vacate the rental unit within the two days required, the Landlord may enforce this Order in the Supreme Court of British Columbia.

As the Landlord was successful with her Application seeking an order of possession for cause, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application which they may deduct from the Tenant's security deposit.

Conclusion

The Tenant is conclusively presumed to have accepted the end of the tenancy for cause. Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective two days after notice is served on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 17, 2020

Residential Tenancy Branch