



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

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; and
- A monetary award for unpaid rent, damages and loss pursuant to section 67.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord appeared and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with the notice of application and evidence by registered mail sent on July 14, 2020. The landlord submitted a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on July 19, 2020, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award as claimed?

Background and Evidence

The landlord testified that this fixed-term tenancy began in September, 2019. The rental unit is a suite in a detached home with two suites. Another occupant resides in the other portion of the property. The monthly rent is \$1,700.00 payable on the first of each month. A security deposit of \$850.00 was collected at the start of the tenancy and is still held by the landlord.

The landlord issued a 1 Month Notice to End Tenancy for Cause dated June 26, 2020 (the "1 Month Notice") providing the reasons for the tenancy to end as:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*

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;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement

The 1 Month Notice was served on the tenant by posting on the rental unit door on June 26, 2020. The landlord testified that they are unaware of the tenant filing an application to dispute the notice. The tenant continues to reside in the rental unit.

The landlord submits that the tenant has made unauthorized alterations to the property by erecting fences around the property and changing the locks preventing the landlord and the other occupant of the rental building to access the property and use of common areas.

The landlord submits that the tenant has failed to pay full rent for several months. The landlord was unable to recall or articulate the amount of the arrear during the hearing. The landlord wrote on their application that they are seeking a monetary award in the amount of \$5,585.00 for unpaid rent. The landlord submitted into evidence a

screenshot of a text exchange with the tenant demanding payment in support of their monetary claim.

The landlord also submits that they believe the garage of the rental property has been damaged and seeks a monetary award of \$500.00 for possible repairs. The landlord submitted a photograph of the garage door as evidence in support of their claim. The landlord testified that they do not know the condition of the interior of the garage but suspect that there is considerable damage that may be due to illegal activities.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

I find that the tenant is deemed served with the 1 Month Notice on June 29, 2020, three days after posting, in accordance with sections 88 and 90 of the *Act*. I find that the tenant has failed to file an application for dispute resolution within 10 days of June 29, 2020, the timeline granted under section 47(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ends on the effective date of the 1 Month Notice, July 31, 2020.

I find that the landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit, the effective date of the notice and the reasons for ending the tenancy.

I am satisfied with the evidence of the landlord that the tenant has engaged in behaviour that has significantly interfered with and unreasonably disturbed other occupants and the landlord. I find the photographic evidence submitted clearly shows barriers being erected on the rental property. I find that the act of constructing unauthorized barriers to entry is an inherently unreasonable act which disturbs and interferes with the rights of others to freely access the rental property.

Accordingly, I find that the landlord is entitled to an Order of Possession. As the effective date of the 1 Month Notice has passed I issue an Order effective two days after service.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that the landlord has not met their evidentiary burden on a balance of probabilities for their monetary claim. I find that the vague testimony of the landlord that money is owed for unpaid rent, and their prior correspondence is insufficient to establish that the amount sought is the actual amount of the arrears or that there is any amount owing. Similarly, I find that the landlord's testimony that they believe that there is damage to the garage which may cost \$500.00 to repair is not sufficient basis for a monetary award. I find that the landlord has provided insufficient evidence for any portion of their monetary claim and consequently dismiss it with leave to reapply.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the balance of the landlord's claim 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 18, 2020

Residential Tenancy Branch