



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, OPC, OPL, MNDCL-S, FFL; CNC, FFT

Introduction

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

- an order of possession for breach of an agreement, for cause, and for landlord's use of property, pursuant to section 55;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for her application, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated July 7, 2020 ("1 Month Notice"), pursuant to section 47; and
- authorization to recover the filing fee for his application, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 28 minutes.

The hearing began at 9:30 a.m. with me and the landlord present. The tenant called in late at 9:32 a.m. No evidence was discussed in the absence of the tenant. The hearing ended at 9:58 a.m.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

During the hearing, both parties confirmed that there is a “future hearing” scheduled for the landlord’s application on September 3, 2020 at 11:00 a.m. The file number for that hearing appears on the front page of this decision. The tenant confirmed that he received the landlord’s application. Both parties agreed to deal with the landlord’s application at this hearing and confirmed that they would not attend the future hearing because it is cancelled by way of this agreement and decision.

Settlement of End of Tenancy Issue

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and orders. During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of a portion of their dispute.

Both parties agreed to the following final and binding settlement of a portion of their dispute:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on August 31, 2020, by which time the tenant and any other occupants will have vacated the rental unit;
2. The landlord agreed that her 1 Month Notice, dated Jul 7, 2020, was cancelled and of no force or effect;
3. The tenant agreed that this settlement agreement constitutes a final and binding resolution of his application at this hearing, except for the filing fee paid for his application;
4. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the landlord’s application, except for her monetary claims;
 - a. Both parties confirmed that they would not be attending the future hearing at 11:00 a.m. on September 3, 2020, for the landlord’s application, which is cancelled by way of this settlement and decision.

These particulars comprise the full and final settlement of a portion of this dispute for both parties. Both parties understood and agreed to the above terms, free of any duress or coercion. Both parties agreed that the above terms are legal, final and binding and enforceable, which settles a portion of this dispute.

I dismiss the tenant's application to recover the \$100.00 filing fee from the landlord. The filing fee is a discretionary award issued by an Arbitrator usually when a party is successful on the merits of their application, after a full hearing. As the tenant settled his application regarding the 1 Month Notice above, I find that he is not entitled to recover the \$100.00 filing fee.

The parties were unable to settle the landlord's application for a monetary order and they asked that I make a decision about it. Below are my findings.

Issues to be Decided

Is the landlord entitled to a monetary order for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit?

Is the landlord entitled to recover the filing fee for their application?

Background and Evidence

Both parties agreed to the following facts. This tenancy began on August 31, 2019, for a fixed term ending on August 31, 2020. Monthly rent of \$2,350.00 is payable on the first day of each month. A security deposit of \$1,175.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit.

The landlord seeks a monetary order of \$31,175.00 plus the \$100.00 application filing fee. The landlord claimed that she was seeking \$30,000.00 for a loss in the sale of the rental unit, \$1,175.00 to retain the tenant's security deposit for "stress" that the tenant caused the landlord, and \$100.00 for the filing fee paid for her application.

The landlord testified regarding the following facts. She put her house up for sale in early March 2020 and it was sold in four days. She offered the tenant a buy-out of monetary compensation and free rent, but he refused and offered her a "ridiculous amount" of \$15,000.00 to leave. The tenant refused to sign the landlord's mutual agreement to end tenancy. The landlord's house sale collapsed. The tenant stated that he would not leave until the end of his fixed term tenancy agreement on August 31, 2020. During the covid-19 pandemic, the tenant would not allow showings inside the rental unit and would not answer the landlord when she tried to communicate with him.

Months later when the covid-19 restrictions were lifted and the landlord's realtors completed showings inside the rental unit, the tenant made people uncomfortable by following them around. The landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated June 26, 2020 with an effective move-out date of August 31, 2020 ("2 Month Notice") to the tenant. The landlord feared the tenant would not move out and the sale of the rental unit was \$30,000.00 less because of the tenant and covid-19.

The tenant testified regarding the following facts. He did not have to sign the landlord's mutual agreement to end tenancy. He had nowhere to go during the covid-19 pandemic from March to August 2020, and he offered for the landlord to buy-out the remainder of his tenancy agreement, which was six months rent, but she disagreed. He did not stop the landlord's showings of the rental unit and he did not follow anyone around. He told the landlord's realtors that they were all required to wear masks inside the rental unit, since they were not wearing any masks, so the realtors told him to pause showings for a month.

Analysis of Landlord's Monetary Application

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's application for \$30,000.00, without leave to reapply. I find that the landlord failed the above test.

The tenant is not required to sign a mutual agreement to end tenancy. He is entitled to live at the rental unit until the end of his fixed term tenancy on August 31, 2020, unless the landlord ends his tenancy in accordance with the *Act*. The landlord issued a 2 Month Notice to the tenant to end his tenancy by August 31, 2020. The tenant is not

obligated to accept the landlord's offers of monetary compensation to vacate the rental unit, just as the landlord was not obligated to accept the tenant's offers of monetary compensation.

The tenant was not required to have showings inside the rental unit during the covid-19 pandemic and state of emergency from March 18, 2020 until June 24, 2020, pursuant to section 8 of *Ministerial Order M089*, as the only landlord entries permitted were for emergencies. If the tenant agreed to showings, the landlord's realtors and their clients were required to abide by the health and safety laws and guidelines imposed by the Provincial government. I find that the tenant did not unlawfully or unreasonably prevent the landlord from showing the rental unit or cause the landlord a monetary loss in the sale of her home. I find that any issues related to the covid-19 pandemic and state of emergency were out of the tenant's control.

The landlord's application to retain the tenant's security deposit of \$1,175.00 is dismissed with leave to reapply. The landlord is not entitled to retain the deposit because she was "stressed out" by the tenant. The security deposit is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

As the landlord was unsuccessful in her monetary application and she settled the order of possession issue, I find that she is not entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on August 31, 2020. The tenant must be served with this Order. 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.

The landlord's application to retain the tenant's security deposit of \$1,175.00 is dismissed with leave to reapply. The security deposit is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

The landlord's 1 Month Notice, dated July 7, 2020, is cancelled and of no force or effect.

The remainder of both parties' applications is dismissed without leave to reapply.

The landlord's application, scheduled for a future hearing on September 3, 2020 at 11:00 a.m., is settled by way of this agreement and decision, and neither party is required to attend the future hearing.

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 20, 2020

Residential Tenancy Branch