



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- 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;
- an Order of Possession for Cause, pursuant to section 55;
- a monetary order for unpaid rent or compensation for loss or damage pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The landlord participated in the teleconference, the tenant did not. The landlord provided video evidence that he personally served the tenant on July 31, 2020. I am satisfied that the landlord served the tenant in accordance with section 89 of the *Act*, accordingly the hearing proceeded and completed on that basis.

Preliminary Issue - Severance

Residential Tenancy Branch (RTB) Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding the One Month Notice and the continuation of this tenancy are not sufficiently related to the landlords' monetary claim to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The landlords monetary claim is unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Notice to End Tenancy. I exercise my discretion to dismiss the landlords monetary claim with leave to reapply. This was explained in detail to the landlord and he indicated that he understood.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to the recovery of the filing fee for this application from the tenant?

Background and Evidence

The landlord gave the following testimony. The tenancy began on November 1, 2019. The monthly rent of \$1250.00 is due on the first of each month. The tenant paid a security deposit of \$625.00 which the landlord still holds. The landlord testified that the tenant has breached a material term of their tenancy by smoking on a continuous basis despite being reminded that there is a no smoking clause in their tenancy agreement. The landlord testified that numerous unauthorized people are living in the unit putting the property at risk and significantly interfering with the landlord. The landlord testified that the tenant and his guests are loud and are often yelling at all hours of the night and urinate all over the property. The landlord testified that the tenant has caused significant damage to the unit. The landlord testified that he issued a One Month Notice to End Tenancy for Cause on July 14, 2020 with an effective date of August 31, 2020 for the following reasons:

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

- *significantly interfered with or unreasonably disturbed 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;*

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

Analysis

Section 47(4) of the *Act* provides that a tenant who receives a notice to end tenancy for cause has 10 days to dispute the notice. Further, section 47(5)(a) of the *Act* confirms that failure to dispute the notice in the required time period results in the conclusive presumption that the tenant has accepted the tenancy ends on the effective date of the notice

I have examined the One Month Notice to End Tenancy for Cause dated July 14, 2020 with an effective date of August 31, 2020 and find that it complies with section 52 of the *Act*. Therefore, I grant the landlord an order of possession pursuant to section 55(2)(b) of the *Act*. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The landlord is also entitled to retain \$100.00 from the security deposit for full satisfaction of the recovery of the filing fee.

Conclusion

The One Month Notice to End Tenancy for Cause dated July 14, 2020 with an effective date of August 31, 2020 is confirmed, it is of full effect and force. The tenancy is terminated. The landlord is granted an order of possession.

The landlords monetary claim 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: September 01, 2020

Residential Tenancy Branch