



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNRL-S, FFL

Introduction

On August 1, 2020, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act"), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing with Q.Z. attending as an agent for him. The Tenant attended the hearing six minutes after the hearing commenced. All in attendance provided a solemn affirmation.

The Landlord advised that the Tenant was served the Notice of Hearing package by registered mail on August 10, 2020. He also advised that the Tenant was served the evidence package by registered mail on August 13, 2020. The Tenant confirmed receipt of both of these packages. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served the Landlord's Notice of Hearing and evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision.

The Tenant advised that he did not submit any evidence for consideration on this file. He stated that his only evidence pertained to the reasons why he did not dispute the Notice within the legislated time frame.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for Landlord's Use of Property?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on May 1, 2018 as a fixed term tenancy, and that the tenancy is now on a month to month basis. Rent is currently established at \$3,100.00 per month and is due on the first day of each month. A security deposit of \$1,550.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties also agreed that the Notice was served to the Tenant in person on June 29, 2020. The reason the Landlord checked off on the Notice was because "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child, the parent or child of that individual's spouse)." As well, the Landlord indicated on the Notice that "The landlord or the landlord's spouse and the child of the landlord or the landlord's spouse" will be occupying the rental unit. The effective end date of the tenancy was noted as August 31, 2020 on the Notice.

The Tenant acknowledged that he received this on June 29, 2020 and that he did not dispute the Notice through the Residential Tenancy Branch as there were personal circumstances that prevented him from doing so. However, it was his position that he disputed the Notice by advising the Landlord that his personal circumstances would prevent him from being able to move.

The Landlord advised that he rented the rental unit because his children left for university and the unit was too big for him. However, due to the recent pandemic, he has been forced to work from home. In addition, his children can no longer attend university in person, so they are unable to live on campus. His son has moved in with him in his one-bedroom apartment and it is too small to accommodate them. He submitted pictures as documentary evidence to support his position that his current

residence is too small for his needs now as his son sleeps on a sofa in the living room and uses the kitchen table for school.

The Tenant did not make any submissions with respect to the reason the Landlord served the Notice. His only submissions were with respect to his personal circumstances pertaining to why he did not dispute the Notice.

The Landlord advised that he was seeking compensation in the amount of **\$5,300.00** for outstanding rent. He stated that the Tenant was in arrears for \$2,100.00 for May 2020 rent, \$2,100.00 for June 2020 rent, and \$3,100.00 for July 2020 rent. As per the Notice, he is not seeking compensation for August 2020 rent as this would be the Tenant's free month. He stated that the Tenant electronically transferred \$2,000.00 yesterday and the Tenant was given a receipt for this, for use and occupancy only. The Landlord is also seeking compensation for September 2020 rent; however, he was advised that he could make a separate Application for this rental loss when it was determined if any rent for September 2020 was owing.

The Tenant acknowledged that he was responsible for the rent and that he would pay it back as soon as he could get back to work.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of occupying the rental unit, in good faith, for himself and/or a close family member. Furthermore, this Section states that once the Notice is received, the Tenant would have 15 days to dispute the Notice. If the Tenant does not do so, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

Section 55(1) of the *Act* states that if the Tenant has not submitted an Application for Dispute Resolution seeking to cancel the notice within the required timeframe and the Landlord's Notice complies with all the requirements of Section 52 of the *Act* and is upheld, the Landlord must be granted an Order of Possession.

The undisputed evidence before me is that the Tenant received the Notice on June 29, 2020. As the fifteenth day fell on Tuesday July 14, 2020, the Tenant must have made his Application by this date at the latest. However, the undisputed evidence is that the Tenant did not dispute this Notice. As such, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice.

The Tenant repeatedly attempted to explain why he did not dispute the Notice. However, he was advised that as he did not make his own Application to dispute the Notice, or request more time to dispute the Notice, I could not consider these reasons. Furthermore, his reasons for not disputing the Notice pertained to his own hardship and were entirely irrelevant to the nature of the hearing, which pertained to the Landlord needing the rental unit for the stated purpose. The Tenant repetitively asked about “appealing” this Decision because he did not dispute the Notice in time, and he was advised of the grounds for Review Consideration. He was also advised that the grounds for Review Consideration were very specific, that they would not address his hardship as his reasons for not disputing the Notice within the legislated timeframes, and that his explanations of hardship would not have any bearing on this Decision, which again pertained to the Landlord wanting to use the rental unit for his own use.

When reviewing the totality of the evidence before me, I find that the Two Month Notice to End Tenancy for Landlord’s Use of Property issued by the Landlord on June 29, 2020 complies with the requirements set out in Section 52. As I am satisfied of the undisputed evidence supporting the reason the Notice was served, as the Landlord’s Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*.

Furthermore, as the undisputed evidence is that the Tenant is also in arrears for rent outstanding, I grant the Landlord a monetary award in the amount of \$5,300.00 for the unpaid rent, as outlined below.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of the *Act*, I allow the Landlord to retain the security deposit to apply to the debt owing.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

May 2020 rent arrears	\$2,100.00
June 2020 rent arrears	\$2,100.00
July 2020 rent arrears	\$3,100.00
Tenant rent payment September 7, 2020	-\$2,000.00
Filing fee	\$100.00

Security deposit	-\$1,550.00
TOTAL MONETARY AWARD	\$3,850.00

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** 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. 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.

In addition, I provide the Landlord with a Monetary Order in the amount of **\$3,850.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 8, 2020

Residential Tenancy Branch