



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, FFL, MNDL, MNRL, OPC

Introduction

In this dispute, the landlord seeks an order of possession on a One Month Notice to End Tenancy for Cause (the “Notice”) under sections 47 and 55 of the *Residential Tenancy Act* (the “Act”), compensation for loss of rent and failure to pay a security deposit, under section 67 of the Act, and, recovery of the filing fee under section 72 of the Act.

The tenants, in their cross-application, seek to dispute the Notice, pursuant to section 47 of the Act.

The landlord filed his application for dispute resolution on August 5, 2020 and the tenants filed their application for dispute resolution on August 4, 2020. A dispute resolution hearing was held on August 28, 2020. Only the landlord attended the hearing, which commenced at 9:30 AM and ended at 9:44 AM. The landlord was given a full opportunity to be heard, present affirmed testimony, make submissions, and call witnesses.

While the tenants were sent a Notice of Dispute Resolution Proceeding by the Residential Tenancy Branch for their application, the landlord testified that he served the Notice of Dispute Resolution Proceeding package on the tenants, in-person, on August 15, 2020. (The landlord commented that the tenants never served him with a copy of their Notice of Dispute Resolution Proceeding package; he was unaware that they had filed an application disputing the Notice.)

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of these applications.

Issues

1. Are the tenants entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession based on that Notice?
3. Is the landlord entitled to some or all of the compensation sought?
4. Is the landlord entitled to recovery of the filing fee?

Background and Evidence

By way of background, the tenancy started on February 3, 2020. It is a fixed term tenancy ending in 2021, and monthly rent is \$1,250.00, due on the first of the month. Under the terms of the written tenancy agreement the tenants were required to pay a security deposit of \$625.00. A copy of the Residential Tenancy Agreement was submitted into evidence.

On July 18, 2020, the landlord hand delivered the Notice to the tenants. A copy of the Notice was submitted into evidence. The Notice indicates that it is being issued for two reasons: (1) "Tenant is repeatedly late paying rent" and (2) the security deposit was not paid within 30 days as required by the tenancy agreement. I note that the Notice, on the top of page 1, indicates that the tenants had the right to dispute the Notice within 10 days of receiving it.

The landlord testified that the tenants have not paid the security deposit of \$625.00. Further, he testified that they are in arrears of rent in the amount of \$3,828.00.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

1. The One Month to End Tenancy for Cause

The Notice was issued under two sections of the Act. It was issued under section 47(1) of the Act which ordinarily permits a landlord to give a notice to end a tenancy when "the tenant is repeatedly late paying rent." However, pursuant to *Residential Tenancy (COVID-19) Order No. 2*, a notice to end a tenancy cannot be issued for repeatedly late rent during the provincial state of emergency. As such, this ground on which the Notice was issued must fail.

The Notice was also issued under section 47(1)(a) of the Act which states that a landlord may end a tenancy by giving notice if “the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement.” In this dispute, this ground (whether or not proven by the landlord) was a valid reason for issuing the Notice.

Section 47(4) of the Act states that

A tenant may dispute a notice under this section 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 under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

Here, the tenants received the Notice on July 18, 2020. The tenants therefore had until July 28, 2020 to file an application for dispute resolution. They did not. Rather, they filed an application a week later, on August 4, 2020. Given that the tenants did not make an application in accordance with subsection 47(4) of the Act, the tenants are conclusively presumed to have accepted that the tenancy ended on August 31, 2020 (the end of the tenancy date as indicated on page 1 of the Notice).

Subsection 55(2)(c) of the Act states that a landlord may request an order of possession of a rental unit when a notice to end the tenancy has been given by the landlord, and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Here, the landlord requests an order of possession and the Notice was not disputed within the 10-day period, and the time for making any further dispute has now expired. As such, the landlord is entitled to an order of possession. Accordingly, the tenants' application is dismissed, without leave to reapply.

An order of possession is issued to the landlord in conjunction with this Decision.

2. Claim for Compensation

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent.

The landlord testified, and provided documentary evidence (including a text message conversation between the parties) to support his submission, that the tenants did not pay rent for several months including rent for September 2020. There is no evidence that the tenants had any legal right not to pay the rent.

Section 67 of the Act states that

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In this case, the landlord has suffered a loss from the tenants' failure to pay rent as required by the tenancy agreement.

In summary, taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving his claim for compensation in the amount of \$3,828.00 for unpaid rent.

3. Claim for Filing Fee

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was successful, I grant his claim for reimbursement of the \$100.00 filing fee.

A total monetary award and corresponding order of \$3,928.00 is granted to the landlord and is issued in conjunction with this Decision.

Conclusion

I HEREBY

1. dismiss the tenants' application without leave to reapply;
2. grant the landlord an order of possession, which must be served on the tenants and which is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia; and,
3. grant the landlord a monetary order in the amount of \$3,928.00, which must be served on the tenants. Should the tenants fail to pay the landlord the amount owed, the landlord may file, and enforce, the order in the Provincial Court of British Columbia (Small Claims Court).

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: September 14, 2020

Residential Tenancy Branch