



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPC, MNRL, MNDL, OPM

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on August 7, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a One Month Notice for Cause dated July 15, 2020 (the "One Month Notice");
- a monetary order for unpaid rent;
- a monetary order for damage or loss;
- an order of possession based on a Mutual Agreement to End Tenancy; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 11:00 AM on September 18, 2020 as a teleconference hearing. Only the Landlord attended the hearing at the appointed date and time and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 17 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord and I were the only persons who had called into this teleconference.

The Landlord testified the Application and documentary evidence package was served to the Tenant in person on August 15, 2020. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on August 15, 2020.

Preliminary Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending in relation to the One Month Notice. The Landlord's request for a monetary order for unpaid rent, money owed for damage or loss are dismissed with leave to reapply.

The Landlord was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession based on a One Month Notice for Cause, pursuant to Section 47 and 55 of the *Act*?
2. Is the Landlord entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord testified that the tenancy began on January 1, 2020. Currently rent in the amount of \$1,300.00 is due to the Landlord each month. The Tenant paid a security deposit in the amount of \$600.00 which the Landlord continues to hold.

The Landlord testified that the Tenant and his guests have generated frequent Police contact since moving into the rental unit. The Landlord stated that the Tenant and his guests make excessive noise on a daily basis. The Landlord stated that he has cautioned the Tenant about the noise, however, the Tenant responds with aggression and threats towards the Landlord. The Landlord stated that he has witnessed open drug use and that there is a collection of stolen property in and around the rental property. The Landlord stated that the Tenant has caused significant damage to the rental unit. The Landlord provided pictures in support.

The Landlord stated that he subsequently served the Tenant in person on July 15, 2020 with a One Month Notice for Cause, with an effective vacancy date of August 31, 2020. During the hearing, the Landlord indicated that the main reason for ending the tenancy on the One Month Notice is that;

“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 and safety or lawful right of another occupant or the landlord, and put the landlord’s property at significant risk.”

The Landlord stated that the Tenant continues to occupy the rental unit and has not paid rent for some time. Therefore, the Landlord is seeking an order of possession in relation to the One Month Notice. If successful, the Landlord is also seeking the return of the filing fee.

Analysis

Based on the uncontested documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a landlord may end a tenancy by giving notice to end the tenancy for cause.

The Landlord served the Tenant in person with a One Month Notice to End Tenancy for Cause dated on July 15, 2020 with an effective vacancy date of August 31, 2020. Based on the oral and written submissions of the Landlord, and in accordance with sections 88 and 90 of the Act, I find that the Tenant is deemed to have been served with the One Month Notice on July 15, 2020.

Section 47(4) of the Act states that a Tenant may dispute a Notice 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 does not make an Application for Dispute Resolution in accordance with Subsection (4), the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit by that date.

As I have found that the Notice was deemed served on the Tenant on July 15, 2020 and that there is no evidence before me that the Tenant applied for Dispute Resolution within 10 days or applied for more time to cancel the Notice, I find that the Tenant is

conclusively presumed to have accepted the end of the tenancy on August 31, 2020. I further find that the Landlord has provided sufficient evidence to demonstrate that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

As the Landlord confirmed that the Tenant has not moved out of the rental unit, and has failed to pay rent to the Landlord for September 2020, I find that the Landlord is entitled to a two-day Order of Possession which must be served on the Tenant. If the Tenant does not vacate the rental unit within the two days required, the Landlord may enforce this Order in the Supreme Court of British Columbia.

As the Landlord was successful with his Application seeking an order of possession for cause, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application which they may deduct from the Tenant's security deposit.

Conclusion

The Tenant is conclusively presumed to have accepted the end of the tenancy for cause. Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective two days after notice is served 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.

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 18, 2020

Residential Tenancy Branch