



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC OPR MNRL FFL

Introduction

The landlord seeks orders of possession based on a One Month Notice to End Tenancy for Cause ("One Month Notice") and on a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") pursuant to sections 46, 47 and 55 of the *Residential Tenancy Act* ("Act"). In addition, the landlord seeks a monetary order for unpaid rent and for recovery of the application filing fee, pursuant to section 67 and 72 of the Act.

The tenant filed two applications for dispute resolution on September 8, 2020 and on September 28, 2020; the two applications were joined, and a hearing was held on October 29, 2020. The tenant and the landlord's agent ("landlord") attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. Both parties confirmed serving evidence on each other.

Issues

1. Is the landlord entitled to an order of possession?
2. Is the landlord entitled to a monetary order for unpaid rent?
3. Is the landlord entitled to a monetary order for the application filing fee?

Background and Evidence

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 the applications. Only relevant evidence necessary to explain my decision is referred to in this decision.

The tenancy began on August 1, 2019 and monthly rent is \$1,800, which is due on the first of the month. The tenant paid a security deposit of \$900. A copy of the written tenancy agreement was submitted into evidence.

On August 10, 2020, the landlord (herself) served the One Month Notice on the tenant by posting the One Month Notice it on the door of the rental unit. The tenant testified and confirmed that she received the One Month Notice on that same date.

I asked the tenant whether she filed an application to dispute the One Month Notice within ten days, as indicated on page of the One Month Notice. She testified that she had not and explained that “I didn’t take it seriously.”

A copy of the One Month Notice, all of which was completed by the landlord in accordance with the Act, was submitted into evidence.

There were subsequent conversations between the parties after the issuing of the One Month Notice, but the landlord testified that at no time did she change the information on the One Month Notice, nor did she rescind it.

(Having heard evidence regarding the first notice to end tenancy, I did not hear further evidence regarding the 10 Day Notice.)

Regarding the landlord’s claim for unpaid rent, the landlord testified that the tenant owed half of the rent for September 2020 (\$900) and half of the rent for October 2020 (\$900) for a total of \$1,800.

The tenant testified that she is “happy to pay the full rent” but explained that the rent changed a few times during her tenancy. She spoke of roommates coming and going, and various amounts that those roommates paid. For example, one occupant (Alex) moved in October 2019 and stayed for eight months, while paying rent to the tenant.

In rebuttal, the landlord gave evidence that at no point did the rent change, and that it remained at the \$1,800 as set out in the tenancy agreement. Rather, the tenant chose to bring in roommates, some of whom stayed longer than others, but at no time did the rent change.

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.

Application for Order of Possession

The landlord gave notice to end the tenancy under section 47(1) of the Act. The One Month Notice must comply with section 52 (form and content) of the Act. Having reviewed the One Month Notice I find that it complies with section 52 of the Act.

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.

This wording is also included on the top of the One Month Notice in bold print.

The tenant testified and acknowledged that she did not dispute the One Month Notice and that did not think it was serious or result in an eviction.

Section 47(5) of the Act states

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.

In this case, the tenant received the One Month Notice on August 10, 2020 and did not make an application for dispute resolution. Therefore, they were conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, namely, September 15, 2020. And, she was required to vacate the rental unit by that date. However, she did not.

Section 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.

Applying this section of the Act to the facts, I find that the landlord is entitled to an order of possession. An order of possession is therefore granted to the landlord.

Given that an order of possession has been granted based on the One Month Notice to End Tenancy, I need not consider whether an order of possession would be granted under the 10 Day Notice.

Claim for Unpaid Rent

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 that the tenant has not paid half the rent for September and half the rent for October, for a total of \$1,800. The tenant testified that she would be happy to pay the full rent, which I accept as an admission that the tenant is required to pay this amount of rent arrears as required by the written tenancy agreement. There is no evidence before me that the landlord in fact changed the rent, and the fact that the tenant chose to have various roommates in the rental unit does not alter or change the amount of rent that is due under the tenancy agreement.

Taking into consideration all the 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 her claim for unpaid in the amount of \$1,800.00.

Claim for Filing Fee

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

Summary of Award, Retention of Security Deposit, and Monetary Order

In total, the landlord is awarded \$1,900.00.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As the tenancy ended on September 15, 2020, the tenancy is now over. As such, I order that the landlord may retain the tenant’s security deposit of \$900.00 in partial satisfaction of the above-noted award.

The balance of the award, \$1,000.00, is granted to the landlord by way of a monetary order, issued in conjunction with this Decision.

Conclusion

I grant the landlord an order of possession, which must be served on the tenant and is effective five (5) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I grant the landlord a monetary order in the amount of \$1,000.00, which must be served on the tenant. Should the tenant 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: October 29, 2020

Residential Tenancy Branch