



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNRL, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on August 11, 2020 seeking an order of possession for the rental unit, and to recover the money for unpaid rent and the Application filing fee. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on September 28, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The Applicant landlord attended the telephone conference call hearing; the Respondent tenant did not attend.

The landlord provided testimony that they gave a copy of the notice of this dispute resolution, and their prepared evidence, to the tenant in person on August 11. When they attended the rental unit, the tenant did not want to open the door to receive the papers. They requested the landlord leave them on the ground in front of the door and the landlord did so.

To further clarify their initial Application, the landlord amended their claim on August 18, completing the required form to do so. They also provided this in person to the tenant. They added an amount required for unpaid rent: \$800.

Based on the statement of the landlord regarding service of the notice of this hearing, I am satisfied the tenant received notice and the landlord’s prepared materials.

The hearing thus proceeded in the tenant’s absence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for cause pursuant to sections 47 and 55 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all evidence and written submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord did not submit a copy of a residential tenancy agreement. They did provide details on the agreement that was a verbal agreement. The rent was \$1,000.00 payable on the first day of the month. The tenant initially paid a security deposit of \$500.00. The tenancy started on July 31, 2017.

The landlord submitted as evidence a copy of the One Month Notice to End Tenancy for Cause (the “One-Month Notice”) issued July 10, 2020, 2020, stating the tenant is repeatedly late paying rate. Additionally, the provided the reason of “damage to the landlord’s property.” On page 3, the landlord provided the “other reason”: “one of my family member. . . moving in the basement.” The One Month Notice provides that the tenant had ten days from the date of service to apply for Dispute Resolution or the tenancy would end effective August 11, 2020.

The landlord issued a second One Month Notice to End Tenancy for Cause (the “second One-Month Notice”) issued on August 13, 2020. This gave a move-out date of September 13, 2020. In their amended Application dated August 18, the landlord stated that this was “a more accurate reason to end tenancy.” On page 3 they listed the following details:

- not paying the rent fully amount
- doesn’t even pick up the garbage
- lots of [junk] in the backyard that doesn’t even belong to us
- basement suite needs a lot of renovation
- basement is stinky due to his pet

The landlord provided photos to show proof of junk in their yard.

In the hearing, they provided testimony on the end of tenancy. The tenant gave a document that is a form used by a tenant to dispute the end of tenancy notice. The landlord did not know whether the tenant went ahead to have a hearing on this issue. The landlord provided a copy of this document dated July 17, 2020 in the evidence. The landlord thought a hearing did not proceed and they did not receive notice of a hearing started by the tenant.

The tenant stated to the landlord they would move out and give their key on August 13. Two or three days prior to this, the tenant was removing their items from the unit; however, on the 13th they did not attend. On this date, the landlord entered the unit to find a lot of garbage. They stated the tenant left some furniture and other personal items there, with food still in the refrigerator. On this date, based on what they saw, the landlord issued the second One-Month Notice.

The tenant was previously living in the unit with their spouse. The spouse paid rent for the month of June; however, they departed that month. For August rent, the tenant paid \$200.00, leaving \$800.00 owing.

The landlord withdrew their claim for rent recovery in the hearing. They wish to retain the security deposit to recover incidental costs related to clean-up and other damages, including missing rent.

The tenant did not attend the hearing. They did not submit documentary evidence to respond to reasons for the issuance of the One-Month Notice.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if, among other things, one or more of the following applies:

- b) The tenant is repeatedly late paying rent;
- e) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that (i) has caused or is likely to cause damage to the landlord's property

Section 47(4) allows a tenant who receives a notice to end tenancy 10 days to submit an Application for Dispute Resolution to cancel the notice. Section 47(5) stipulates that if a tenant fails to apply within 10 days, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and they must vacate the rental unit.

I focus on the initial One-Month Notice issued by the landlord on July 10, 2020. This is the document that the landlord states is more accurate in terms of reasons for ending the tenancy. I have reviewed the Notice, and I find it complies with the form and content requirements of section 52 of the Act. With no evidence to the contrary, I find the landlord served this document to the tenant in person on that date.

I find that the tenants did not dispute this second One-Month Notice within ten days, pursuant to section 47(4). The evidence shows the tenant left the unit shortly after receiving this document on their door. I find that the tenant is conclusively presumed to have accepted that the tenancy has ended in accordance with section 47(5).

I find the landlord has the authority to issue the Notice under section 47 of the Act. I grant the landlord's request for an Order of Possession under section 55 of the Act.

In the hearing the landlord stated they withdraw their claim for unpaid rent. They re-stated this when I asked for specific verification on that point. They also stated they were not making a separate claim for costs of clean-up removal, or other damages. They stated their intention to keep the \$500.00 security deposit to offset monetary loss stemming from this tenancy. Although the landlord did not initially apply to retain the security deposit to offset monetary amounts, I amend their application in this hearing to include that specific provision.

I find the landlord has presented evidence that shows damage to the unit and I am satisfied they incurred some costs for clean-up at the end of tenancy. Additionally, they provided sufficient evidence to show they lost rent amounts owing. I find the landlord is entitled to amounts owing. The landlord dropped their specific claim for rent amounts owing. They did not present an exact cost amount of clean-up.

The Act section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of rent

amounts owing. I am authorizing the landlord to keep the security deposit amount of \$500.00.

As the landlord is successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application. I add this amount to the security deposit amount that the landlord shall keep.

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.

Pursuant to section 72 of the *Act*, I order that the landlord shall keep the security deposit amount of \$500.00. This is to offset missing rent and other costs, as well as the Application filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: October 5, 2020

Residential Tenancy Branch