



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDL-S, MNRL-S, MNDCL-S, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on September 9, 2020 seeking an order of possession for the rental unit, to recover the money for unpaid rent and compensation for damages, and to recover the filing fee for the Application. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on October 30, 2020. In the conference call hearing I explained the process and provided the landlord -- the only attending party -- the opportunity to ask questions.

To proceed with this hearing, I must be satisfied that the landlord made reasonable attempts to serve the tenant with this Notice of Dispute Resolution Proceeding. This means the landlord must provide proof that the document was served at a verified address allowed under Section 89 of the *Act*, and I must accept that evidence.

The landlord gave testimony that the address they provided on the registered mail package was that of the rental unit, still occupied by the tenants at the time of its mailing. They provided a Canada Post registered mail tracking number, one for each tenant. They also gave an account of the movement of the mail. It was posted via registered mail on September 18. A postal clerk informed the landlord that one of the tenants attended the post office and refused to accept the mail. In the words of the landlord: “they declined to accept it.”

I accept the landlord’s undisputed evidence that the tracking history showed that the tenants refused the registered mail package; therefore, I find they avoided service.

Based on the submissions of the landlord, I accept they served the tenants notice of this hearing and the landlord's evidence in a manner complying with section 89(1)(c) of the *Act*, and the hearing proceeded in the tenant's absence.

Issue(s) to be Decided

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

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to compensation for damage or other monetary loss, pursuant to section 67 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 written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord spoke to the terms of the tenancy agreement, a copy of which was provided as evidence. The tenancy began on March 1, 2018 for a fixed term ending on March 1, 2019. After this time period, the tenancy became a month-to-month arrangement.

The rent amount was \$900 per month payable on the 1st of each month. The tenant paid a security deposit of \$450 on February 1, 2018. The tenants were not in attendance at this hearing to provide any information contrary to that presented by the landlord on these discrete points.

The landlord provided a copy of the One-Month Notice, issued July 9, 2020. This document gave the move-out date of August 10, 2020. The landlord served this document by attaching it to the front door. They provided a witness statement in the

evidence that attests to this. The landlord indicated the following reasons for issuing the One-Month Notice on page 2:

- 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 or safety or lawful right of another occupant or the landlord
 - put the landlord's property at significant risk
- tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park

They attached a four-page document to the One-Month Notice that gives details of the causes. They provided this document as evidence for the hearing and spoke to the details in their oral testimony. The prevalent points are:

- in August 2019 an electrician attended because of a breaker switch tripping, and found a common wire was removed – this gave electrocution to the electrician, who “flagged the situation as really dangerous” for the tenants
- the landlords previously never experienced any issues with electrical prior to this tenancy
- a short time after this on September 3, 2019, the tenants inquired on repair to appliances that were damaged by the incident
- the landlord visited and observed a large cable extended to a trailer in the backyard
- when asked, one of the tenants provided that a friend had installed another electrical panel
- the landlord subsequently met with the tenants and the friend, and then were subject to one of the tenant's aggression
- there was subsequent communication to repair the appliances – they undertook repair the following week, and at this time the tenant inquired about their water cooler – one tenant's aggression escalated to the point where they began “tearing siding off the walls and ripping off the window frames”
- in early 2020, a realtor visited to assess the property, with advance notice to the tenants – one of the tenants “points out as many faults to the property that he can think of” to the realtor
- through March until June 2020, the landlord was unable to end the tenancy for cause due to the suspension of these laws in pandemic time – the landlord made requests for rent in each of these months

- by July 2020, rent was still unpaid for June – the landlord then issued the One-Month Notice on July 9, 2020.

Regarding the one tenant's aggression, the landlord's partner provided a statement that includes their direct account of the incident in which the RCMP were called to the property. Additionally, threatening text messages and social media posts directed to the landlords have them concerned for their safety.

Through to the time of this hearing, the tenants did not provide any rent payments to the landlord. This is inclusive of the months July, August, September and October. In their evidence they provided one text message for each of the months from July onwards.

As provided on their 'Monetary Order Worksheet' prepared on October 15, 2020, this is \$900 per month, for the total of \$3,600.

The landlord also provided the following amounts on their worksheet:

| Item(s) | Total \$ |
|---|-------------------|
| appliance – stove assessment and travel | 126.00 |
| appliance – circuit board | 225.00 |
| dishwasher & hood fan replacement | 828.78 |
| registered mail | 27.17 |
| Total | \$1,206.95 |

For each of these amounts, the landlord provided receipts as evidence. In their detailed account of events, the landlord gave detail of the tenants' inquiry on appliance repair on September 3, 2019. The landlord mentioned, in their recall of a conversation on September 23, 2019, that "[they] consider the essential appliances and various other repairs to light fixtures and switches, not to mention giving them a microwave, all amiable gestures . . ."

A letter from the attending electrician is in the landlord's evidence. This states that they "recommended change/replace this OLD electrical panel with a new one to eliminate future discomfort for tenant, for landlord and for me." They detailed the work that ensued due to their discovery of the "connecting neutral wire [that] was MISSING." They also provided that on their discussion with one tenant, that tenant was "elusive" though "eventually . . . did admit that someone had done some electrical work on the panel and installed the new two pole 30 Amp breaker."

The tenants did not provide documentary evidence and did not attend the hearing to provide oral testimony in this dispute.

Analysis

From the evidence and testimony of the landlord, I am satisfied that a tenancy agreement was in place. They provided the specific terms of the rent payments as well as the amount the tenants paid for the security deposit. The tenants did not attend the hearing; therefore, there is no evidence before me to show otherwise.

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:

- d) the tenant or a person permitted on the residential property by the tenant has
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) put the landlord's property at significant risk.
- j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential 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 have reviewed the Notice, and I find it complies with the form and content requirements of section 52 of the *Act*. I find that the tenants did not dispute the Notice within ten days, pursuant to section 47(4). 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*.

Regarding payment of rent, the *Act* section 26 outlines a tenant's duty:

- (1) A tenant must pay rent when it is due under the tenancy agreement, whether the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I accept the evidence before me that the tenant failed to pay full rent for June 2020 and the months following through to October 2020. The tenants have not provided any testimony or evidence on why they would be exempt from rent payment; therefore, I find they have no right to do so and this constitutes a breach under the *Act*.

The landlord testified that they tried to get the tenant to pay over quite some time; however, the tenant did not comply. The landlord provided evidence in the form of their messages to the tenant each month requesting payment. As presented, I find the landlord is entitled to the amount of \$3,600 in unpaid rent as they claim.

The landlord inquired on the November 2020 rent amount as an amendment to their claim. I find the landlord is not entitled to an order that includes this amount; this claim is premature because the rent for November was not due at the time of the hearing.

The *Act* section 32(3) provides that a tenant must repair damage to the rental unit that is caused by the actions or neglect of the tenant or a person permitted on the property by the tenant.

The evidence shows the electrical wiring to the rental unit was interrupted. The landlord provided a statement from the attending electrician who stated this was the case. That electrician also provided in their account that one of the tenants admitted to having a friend work on the electrical panel. This caused damages to the appliances.

I find as fact the tenants were the cause of damage in the rental unit. This is in line with section 32(3); therefore, I find the tenants are responsible for costs associated with the damage. These costs were dutifully borne by the landlord as the situation emerged; I find this was done on the tenant's own request. Moreover, I find the evidence shows this was not due to wear and tear of the appliances.

With these findings, I award the landlord \$1,179.78 as recompense for the costs associated with the needed repairs in the unit.

The *Act* does not provide for recovery of other costs associated with serving hearing documents – therefore, the cost of registered mail is not recoverable.

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 \$4,779.78. After setting off the security deposit amount of \$450.00, there is a balance of \$4,329.78. I am authorizing the landlord to keep the security deposit and award the balance of \$4,329.78 as compensation for rent owing.

As the landlord is successful, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlord effective TWO DAYS after service of the Order on the tenant. Should the tenant fail to comply with the Order, it may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 and 72 of the *Act*, I grant the landlord a separate Monetary Order for the recovery of the amounts claimed and the filing fee paid for this application. This amount is \$4,429.78. The landlord is provided with this Order 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 *Act*.

Dated: November 2, 2020

Residential Tenancy Branch