



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, OLC, RR, PSF, RP, MNRT, MNDCT

Introduction

This hearing originally convened on January 15, 2021 and was adjourned to February 8, 2021. This decision should be read in conjunction with the January 15, 2021 Interim Decision.

This hearing dealt with two tenant applications for dispute resolution pursuant to the *Residential Tenancy Act* (the *Act*). The applications dealt with claims for the following:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46;
- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- a Monetary Order for the cost of emergency repairs, pursuant to section 33;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order for regular repairs, pursuant to section 32;
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 65; and
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

The tenant did not attend this hearing, although I left the teleconference hearing connection open for 10 minutes in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and

participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified to the correct spelling of his name. The tenant's applications for dispute resolution mis-spelled the landlord's name. Pursuant to section 64 of the *Act*, I amend the tenant's applications to correctly spell the landlord's name.

Rule 7 of the Rules of Procedure provides as follows:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Based on the above, in the absence of any evidence or submissions from the applicant I order the applications dismissed without liberty to reapply.

I note that section 55 of the *Act* requires that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is dismissed or the landlord's notice to end tenancy is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issues to be Decided

1. Is the landlord entitled to an Order of Possession in accordance with the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46?
2. Is the landlord entitled to an Order of Possession in accordance with the One Month Notice to End Tenancy for Cause, pursuant to section 47?

Background/Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the landlord's submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony. The tenant was originally supposed to move into a different unit in the subject rental building, on September 1, 2020. To that end, the tenant paid the landlord rent in the amount of \$1,400.00. The landlord testified that he filled out a Shelter Information for the tenant to move into the first unit. The Shelter Information form was entered into evidence and states that rent is \$1,400.00 per month and that the security deposit is \$700.00, and the pet damage deposit is \$700.00. The landlord testified that the tenant never paid the security deposit or pet damage deposit and never moved into that unit.

The landlord testified that at the end of September 2020 the tenant asked the landlord if she could move into the subject rental property instead, and the landlord agreed. The landlord testified that the tenant moved in on October 1, 2020. The landlord testified that rent was \$1,500.00 per month, due on the last day of each month and that the security and pet damage deposits were \$750.00 each. The landlord testified that he provided the tenant with the tenancy agreement, but she did not sign it. The tenancy agreement was entered into evidence. The landlord testified that the tenant verbally agreed to pay the landlord the security and pet damage deposits when she moved in, but the tenant did not do so.

The landlord testified that he served the tenant with the One Month Notice to End Tenancy for Cause (the "One Month Notice") in person on October 31, 2020. The One Month Notice was entered into evidence, is dated October 31, 2020 and has an effective date of November 30, 2020.

The One Month Notice states the following reason for ending the tenancy:

- Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The tenant filed to dispute the One Month Notice on November 9, 2020.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid rent (the "10 Day Notice") was posted on the tenant's door on October 21, 2020. The tenant filed to dispute the 10 Day Notice on October 25, 2020. The landlord testified that October 2020's rent was paid in full and that he does not recall when it was paid.

Analysis

I accept the landlord's undisputed testimony that the One Month Notice was personally served on the tenant on October 31, 2020, in accordance with section 88 of the *Act*. I find that the tenant failed to dispute the One Month Notice nine days after it was received. I find that the One Month Notice complies with section 52 of the *Act*.

Section 47(1)(a) of the *Act* states:

47 (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(a)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;

Based on the undisputed testimony of the landlord, the tenancy agreement entered into evidence, and the Shelter Information sheet entered into evidence, I find that the tenant knew that the landlord required a security deposit and pet damage deposit to be paid at the beginning of this tenancy. While the Shelter Information sheet refers to a different unit in the building, I find that it goes to show the understanding of both parties regarding security and pet damage deposits in the subject rental building. I find that the tenant is not permitted to escape the requirement to pay the pet and security deposit due at the start of this tenancy by refusing to sign the tenancy agreement.

I find that the tenant did not pay the landlord the security deposit or the pet damage deposit, each in the amount of \$750.00, within 30 days of their verbal agreement to pay the deposits at the start of this tenancy. I find that the parties had the above verbal agreement as part of their verbal tenancy agreement. I find that the tenant breached section 47(1)(a) of the *Act* by failing to pay the required deposits. I therefore find that the landlord is entitled to a two-day Order of Possession, pursuant to section 47(1)(a) and section 55 of the *Act*.

As I have determined that this tenancy will end pursuant to the One Month Notice, I decline to consider if this tenancy would also end under the 10 Day Notice.

Conclusion

The tenant's applications are dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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: February 08, 2021

Residential Tenancy Branch