



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDCL-S, FFL

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for cause, pursuant to sections 47 and 55;
- a Monetary Order for damage or compensation, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:43 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlords attended the hearing and were 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 landlords and I were the only ones who had called into this teleconference.

The landlords testified that they served the tenant with this application for dispute resolution on December 12, 2020 via registered mail. A registered mail receipt stating same was entered into evidence. The Canada Post website states that this package was delivered on December 14, 2020. I find that the tenant was served in accordance with section 89 of the *Act*.

Residential Tenancy Branch Rule of Procedure 2.3 states that, if, in the course of the dispute resolution proceeding, the dispute resolution officer determines that it is appropriate to do so, the officer may sever or dismiss the unrelated disputes contained in a single application with or without leave to reapply. I dismiss the landlords' claim for

a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*, with leave to reapply.

Issues to be Decided

1. Are the landlords entitled to an Order of Possession for cause, pursuant to sections 47 and 55 of the *Act*?
2. Are the landlords entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
3. Are the landlords entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

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

The landlords provided the following undisputed testimony. This tenancy began on September 1, 2019 and is currently ongoing. Monthly rent in the amount of \$800.00 is payable on the first day of each month. A security deposit of \$800.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The landlords testified that the rental unit is a three-bedroom basement suite and that they rent the rooms out to different individuals.

The landlords testified that on October 2, 2020, a One Month Notice to End Tenancy for Cause with an effective date of November 30, 2020 (the "One Month Notice") was posted on the tenant's bedroom door. A witnessed proof of service document stating same was entered into evidence. Photographs of the posting were also entered into evidence.

The landlords testified that the tenant was served the One Month Notice because of repeated tenancy violations. The landlords testified that the tenant had loud late-night parties, allowed her boyfriend to live at the subject rental property contrary to the tenancy agreement and significantly disturbed her roommate with late night noises.

Analysis

I find that the tenant was served with the One Month Notice in accordance with section 88 of the *Act*. The tenant did not file an application for dispute resolution with the Residential Tenancy Branch to dispute the One Month Notice.

Section 47(4) and section 47(5) of the *Act* state that if a tenant who has received a One Month Notice does not make an application for dispute resolution within 10 days after the date the tenant receives the notice, 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.

The tenant did not dispute the Notice within 10 days of receiving it. I find that, pursuant to section 47(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, that being November 30, 2020.

As the tenant did not vacate the subject rental property on that date, I award the landlords a two-day order of possession. The landlords will be given a formal 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 landlords may enforce this Order in the Supreme Court of British Columbia.

As the landlords were successful in this application for dispute resolution, I find that the landlords are entitled to recover the \$100.00 filing fee from the tenant, in accordance with section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlords are entitled to retain \$100.00 from the tenant's security deposit.

Conclusion

The landlords are entitled to retain \$100.00 from the tenant's security deposit.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlords effective **two days after service on the tenant**. Should the tenants 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: March 02, 2021

Residential Tenancy Branch