



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNRL, FFL, CNC, MNDCT, RR, RP, LRE, OLC

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlord served the tenant with the notice of hearing package and the 11 submitted documentary evidence files in person on January 6, 2021. Both parties also confirmed the tenant served the landlord with the notice of hearing package and her 6 submitted documentary evidence files in person. Neither party raised any

service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

At the outset, the tenant's application was clarified. The tenant stated that her request for:

A monetary order for compensation	\$13,800.00	MNDCT
A reduction in rent		RR
A request for Repairs		RP
An order to suspend/set conditions on the landlord's right to enter		LRE
An order for the landlord to comply		OLC

were all unrelated to the primary issue filed by the tenant seeking an order to cancel the notice to end tenancy for cause (repeatedly late paying rent). Residential Tenancy Branch, Rules of Procedure, Rule 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 apply. As such, these portions of the tenant's application are dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Is the tenant entitled to an order cancelling the 1 month notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on March 1, 2020 on fixed term until February 28, 2022 and then thereafter on another fixed term or month-to-month basis as per the submitted copy of the signed tenancy agreement dated February 13, 2020. The monthly rent is \$2,300.00 payable on the 1st day of each month. A security deposit of \$1,150.00 was paid on February 13, 2020.

The landlord seeks an order of possession for cause and a monetary claim of \$2,600.00 which consists of unpaid rent for:

\$100.00	Unpaid Rent, November 2020
\$100.00	Unpaid Rent, December 2020
\$2,300.00	Unpaid Rent, January 2021
\$100.00	Filing Fee

Both parties confirmed that on December 7, 2020, the landlord served the tenant with the 1 Month Notice dated December 7, 2020 by posting it to the rental unit door. The 1 Month Notice sets out an effective end of tenancy date of January 31, 2021 and that it was being given as:

- the tenant is repeatedly late paying rent;

The details of cause states:

Tenant paid rent late for months April, may, June, July, August, October, November and December 2020.

[reproduced as written]

The landlord stated that the tenant failed to pay rent on time from April 2020 to December 2020 over the 9 month period.

During the hearing Ministerial Order 449-2020 was explained to both parties. In it the order states that "Affected Rent" is rent due for the period from March 18, 2020 to August 17, 2020 regarding Notices to end tenancy. 1.06 states in part that an exception was created ordering that a landlord must not give a tenant notice to end tenancy under section 47 (1) of the Residential Tenancy Act (RTA), for a reason that relates to affected rent being unpaid, including one or more payments of the affected rent are late. Both parties stated their understanding.

The tenant confirmed that she was late paying rent for August, September, October, November and December of 2020.

The landlord stated that as of the date of this hearing the tenant continues to not pay any rent from January to March of 2021 at \$2,300.00 per month. The landlord claims that the updated claim is now at \$7,100.00.

The landlord stated that the tenant owes \$100.00 in arrears for November and December of 2020 while owing the entire monthly rent for the 5 months from January to March 2021.

The tenant disputes the landlord's claim arguing that the November 2020 rent was paid in full and that there were no arrears. The tenant stated that a verbal agreement was made with the landlord lowering the monthly rent by \$100.00 for a limited period. However, the tenant confirmed that there was \$100.00 in rental arrears for December 2020 and no rent paid for the 5 months claimed by the landlord.

The landlord disputes the tenant's claim arguing that no agreement was made to lower the monthly rent.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, I accept the undisputed affirmed evidence of both parties and find that the landlord did serve the tenant with the 1 month notice dated December 7, 2020 by posting it to the rental unit door for repeatedly paying rent late.

The tenant provided undisputed affirmed testimony that she was late paying rent from September to December 2020. The tenant while disputing the landlord's claim that there were no rental arrears for November 2020 of \$100.00, confirmed rental arrears of \$100.00 for December 2020 and that no rent was paid for January 2021 to March 2021.

On this basis, I find that the landlord has provided sufficient evidence to support the 1 month notice dated December 7, 2020 for an order of possession and has established a claim for unpaid rent of \$7,000.00. The tenant's application to cancel the 1 month notice is dismissed. The landlord's order of possession is to be effective 2 days after it is served upon the tenant.

I find on a balance of probabilities that the landlord has established a claim for unpaid rental arrears of \$100.00 for November 2020 as claimed. Despite the tenant disputing this claim, the tenant argued that a verbal agreement had been made with the landlord that monthly rent was lowered by \$100.00 on a limited basis. The landlord disputed that an agreement was made. The tenant was unable to provide any supporting evidence of

the agreement. The tenant failed to provide sufficient evidence of an agreement lowering the monthly rent on a limited basis.

The landlord has established a total monetary claim of \$7,100.00.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$7,200.00.

These orders must be served upon the tenant. Should the tenant fail to comply with these orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court and enforced as orders of those Courts.

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 15, 2021

Residential Tenancy Branch