



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT, MNRL-S, MNDCL-S, FFL, OPR, OPC

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on January 11, 2021 for:

1. An Order allowing more time to dispute a notice to end tenancy - Section 66;
and
2. An Order cancelling a notice to end tenancy - Section 46.

The Landlord applied on February 6, 2021 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

Preliminary Matters

The Tenant called into the hearing approximately 40 minutes late. The hearing had started with only the Landlord in attendance. The Tenant states that it was having difficulties calling into the hearing and had just left the call to the Residential Tenancy Branch (the “RTB”) to obtain this help. The Tenant was provided with the Landlord’s testimony taken to that point and given the opportunity to respond. The Parties were each given full opportunity under oath to be heard, to present evidence and to make

submissions. Prior to the Tenant appearing the Landlord was given opportunity to upload a clear copy of the 10-day notice to end tenancy. The Tenant confirmed the details of that notice as set out below. The Tenant also confirmed the details of the relevant sections of the tenancy agreement as set out below.

The Tenant states that it did not receive any evidence from the Landlord. The Landlord states that on February 16, 2021 the evidence was provided together with the application and notice of hearing by posting the package on the door. The Landlord confirms that additional evidence was provided to the RTB after this date.

Rule 3.14 of the RTB Rules of Procedure provides that documentary evidence that it intended to be relied on at the hearing by be received by the respondent not less than 14 days before the hearing. Given the Tenant's evidence of not having received the Landlord's documentary evidence and considering that the Landlord did not provide any supporting evidence of this service I decline to consider any of the Landlord's documentary evidence submissions other than the supporting evidence documents the relevant contents of which the Tenant has not disputed.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed or undisputed facts: The tenancy under written agreement started November 8, 2020 on a fixed term to end April 30, 2021. Rent of \$1,800.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected a security deposit of \$800.00. The agreement provides for a late rent fee of \$50.00 and that the Tenant will obey the Strata Rules and pay all bylaw infractions. The Tenant failed to pay rent for January 2021 and on January 4, 2021 the Landlord served

the Tenant in person with a 10-day notice to end tenancy for unpaid rent (the "Notice"). The Tenant did not pay the January 2021 arrears and has not paid rent for February to April 2021, inclusive. The Tenant has not moved out of the unit. The Notice is dated January 3, 2021, is signed by the Landlord, sets out the dispute address, sets out the effective date of January 14, 2021 and is on the approved Residential Tenancy Branch (the "RTB") form.

Tenant KL states that the other named Tenant in the applications ("Tenant BG") is named as a tenant under the agreement. The Landlord states that Tenant KL is the only named Tenant. The Landlord provides a copy of the tenancy agreement.

The Landlord claims \$7,200.00 as unpaid rent for January to April 2021, inclusive. The Landlord also claims \$50.00 as late rent fees.

The Landlord states that the Tenant breached noise bylaws on January 15, January 26, and February 4, 2021. The Landlord states the Tenants were called within hours of the Landlord being informed from the Strata of the breaches. The Landlord states that in addition to speaking with both Tenants, the Landlord, with a witness, taped each of the notices of the \$200.00 Strata fines to the Tenant's door. The Landlord states that since making the application additional fines were levied and seeks to increase its claim to \$1,200.00. The Landlord confirms that its application was not amended to increase this claimed amount. The Landlord states that the fines to the date of the application have been paid by the Landlord. The Tenant states that it knows nothing about the infractions or fines and was never informed by the Landlord of any fines.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Given the agreed facts I find that the Landlord has substantiated unpaid rent of **\$7,200.00** for January to April 2021, inclusive.

Section 46(1) of the Act provides that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Based on the agreed facts that the rent was not paid for January 2021, I find that the Notice is valid. I therefore dismiss the Tenant's claim to cancel the notice. As the Tenant has not been successful with this claim I find that the Tenant is not entitled to recovery of the filing fee and I dismiss this claim.

Section 55(1) of the Act provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the Notice has been found valid and given the agreed facts of the form and content of the Notice, I find that the Notice complies and that the Landlord is entitled to an order of possession.

Section 7(1) of the RTB Regulations provides that a landlord may charge, inter alia, a service fee charged by a financial institution to the landlord for the return of a tenant's cheque and an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent. Section 6(3)(a) of the Act provides that a term of a tenancy agreement is not enforceable if the term is inconsistent with this Act or the regulations. Given the agreed facts that the tenancy agreement sets out a late fee greater than that allowed under the Regulation I find that the late fee is not enforceable. I dismiss the Landlord's claims for late fees.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Given the Tenant's denial of knowledge of the Strata breaches and as the Landlord's documentary evidence of those breaches may not be considered I find on a balance of probabilities that the Landlord has not provided sufficient evidence to substantiate its claim for compensation in relation to the fines. I therefore dismiss this claim.

As the Landlord's claims have been successful, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$7,300.00**. Deducting the security deposit of **\$800.00** plus zero interest from the Landlord's entitlement leaves **\$6,500.00** owed by the Tenant to the Landlord. As Tenant BG is not named as a tenant on the tenancy agreement, I decline to add this person to the monetary order.

Conclusion

The Tenant's application is dismissed.

I grant an Order of Possession to the Landlord effective 2 days after it has been served on the Tenant. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I Order the Landlord to retain the security deposit plus interest of \$800.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining **\$6,500.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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

Dated: April 12, 2021

Residential Tenancy Branch