



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNDL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order of Possession, further to having served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use dated January 21, 2021 ("Two Month Notice"). The Landlord also applied for a monetary order for damages, retaining the security deposit to apply to the claim; and to recover the \$100.00 cost of her Application filing fee.

The Landlord and counsel for the Landlord, M.B. ("Counsel"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 20 minutes and was monitored throughout this time. The only persons to call into the hearing were the Landlord and Counsel, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Landlord and her Counsel.

I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Landlord was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that her husband, [J.J.], served the Tenant with the Notice of Hearing documents in person on February 28, 2021. The Landlord provided a Proof of Service form signed by [J.J.] as evidence of service. I find that the Tenant was served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted

the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenant.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and she confirmed these addresses in the hearing. She also confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Landlord that pursuant to Rule 7.4, I would only consider her written or documentary evidence to which she pointed or directed me in the hearing. I also advised her that she is not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- Is the Landlord entitled to Recovery of the Application filing fee?

Background and Evidence

The Landlord confirmed details in the tenancy agreement that she submitted, saying that the fixed-term tenancy began on September 1, 2015 and ran to August 31, 2016, and then operated on a month-to-month basis. She confirmed that the Tenant paid her a monthly rent of \$900.00, due on the first day of each month, and that the Tenant paid the Landlord a security deposit of \$450.00 and no pet damage deposit. The Landlord said that she still holds the security deposit in full.

#1 *Eviction Notice*

The Landlord confirmed that she served the Tenant with a Two Month Notice that was signed and dated January 21, 2021, which had the rental unit address on it. The Two Month Notice was served to the Tenant when the Landlord attached a copy to the rental unit door on January 21, 2021. It has an effective vacancy date of March 31, 2021, which is automatically corrected by section 53 the Act to April 30, 2021. The Landlord confirmed that the Two Month Notice was served on the ground that the rental unit will be occupied by the Landlord's mother and father.

#2 Monetary Claim

The Landlord has also claimed compensation for fire damage she said was caused by the Tenant. She is claiming recovery of her \$1,000.00 insurance deductible. In the hearing, the Landlord said:

This is from fire damage. On January 2, a bit of a fire occurred in the suite, which was started by the Tenant, who is supposed to be non-smoking, but he started smoking last summer; he said he would keep it outside. See the fire department's report that it was started by a cigarette butt left on the window sill. From the photos, the damage was minimal, but the fire crew had to pull out the drywall and parts of the wall to make sure the fire was out. I am seeking the deductible from our insurance claim.

Counsel referred me to an email from the insurer dated January 4, 2021, which shows the \$1,000.00 insurance deductible the Landlord owes for this repair claim.

The Landlord also referred me to a report from the local fire department "...which proves the fire did happen, in case you have any concern over [the Tenant's] testimony. It's a January 2nd report from the fire department in the materials", she said.

The Landlord went on: "Repair work hasn't been done yet, as they tried to assess the damage, but they weren't able to so with his belongings in the suite. We're still waiting to have the repair work, done."

The Landlord submitted photographs of the rental unit, which show a hole in a piece of the drywall - down to the stud, and a mess at the entrance floor from drywall damage.

The Landlord also submitted an Incident Report from the local fire department ("Report"), which states that the department responded to a report of smoke inside a residence. It says that the home owner directed the fire department to the rental unit, which when the door opened was "...filled with white smoke, and the renter was standing by the door to explain the cause. There was no sign of fire, and heat was minimal, but smoke needed to be removed." The Report went on to explain that they removed the smoke from the rental unit and the upstairs suite, as well.

The Report states:

The homeowner was also informed that crews felt that living conditions inside the

suite were poor, and that sanitation was an issue within the suite. Smoke alarm had also been disconnected. Homeowner was advised to call insurance and begin the process of bringing the suite up to a livable standard.

The Report describes the fire department as having determined that “light smoke visible inside a structure, unconfirmed source, no report of fire.”

The Landlord said that the damage to the unit was not from the fire, but because the fire fighters had to pull out drywall and parts of the wall to make sure the fire was out.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

#1 *Eviction Notice*

Based on the documentary evidence and testimony before me, and pursuant to section 90 of the Act, I find that the Tenant was deemed served with the Two Month Notice on March 3, 2021, three days after it was posted to the door of the rental unit.

Section 49(9) of the Act states that if a tenant who has received a Two Month Notice does not apply for dispute resolution to cancel the notice within 15 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.

As there is no evidence before me that the Tenant disputed the Two Month Notice, I find that he is conclusively presumed under section 49(9) of the Act to have accepted the Two Month Notice, and I find that the tenancy, therefore, ended on April 30, 2021. As a result, I find that the Tenant is overholding the rental unit and the Landlord is therefore entitled to an Order of Possession pursuant to section 55(2)(b) of the Act. As the corrected effective date has passed, the Order of Possession will therefore be **effective two days after service on the Tenant**.

#2 *Monetary Claim*

Before the Landlord testified, I advised her of how I would analyze the evidence presented to me. I told her that a party who applies for compensation against another

party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

(“Test”)

I note that the Report does not say that the fire was started by a cigarette butt on the window sill, as the Landlord suggested in the hearing; however, it does say that the Tenant “...was standing by the door to explain the cause”, and that the smoke detector had been disconnected. Further, the damage was limited to the rental unit, other than smoke that had to be cleared from the other suite in the residential property.

Based on the evidence before me overall, I find it more likely than not that the Tenant’s behaviour in the rental unit caused the suite to be filled with smoke, such that the fire department needed to be called. I find if not for the Tenant’s behaviour, the fire fighters would not have had to remove parts of the drywall to ensure that the fire or whatever caused the smoke was not lingering. I find that the Landlord incurred a loss because of the Tenant’s behaviour.

The Landlord has made a claim through her insurance company, which I find is a means of establishing the value of a loss, and which I find helps minimize or mitigate the cost, as the insurance company will cover the cost of anything over \$1,000.00. I, therefore, find that the Landlord has established a valid, undisputed claim for \$1,000.00, and I award the Landlord with **\$1,000.00** from the Tenant for the damage caused to the rental unit on January 2, 2021, pursuant to section 67 of the Act.

Summary and Set Off

I find that this Application meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant’s security deposit of \$450.00 in partial satisfaction of the Landlord’s monetary claim.

Given the Landlord’s success, I also award the Landlord with recovery of the **\$100.00** Application filing fee from the Tenant, pursuant to section 72 of the Act.

I authorize the Landlord to retain the Tenant's \$450.00 security deposit in partial satisfaction of the monetary award. I grant the Landlord a Monetary Order of **\$650.00** from the Tenant for the balance owing on the monetary awards.

Pursuant to section 55 of the Act, the Landlord has also been granted an **Order of Possession** for the rental unit, **effective two days** from when it is deemed served by the Landlord, pursuant to section 90 of the Act.

Conclusion

The Landlord is successful in her Application, as she provided sufficient evidence to establish that the Two Month Notice is valid and enforceable, and that the Landlord is, therefore, entitled to an Order of Possession.

The Landlord is also awarded compensation from the Tenant of \$1,000.00, as the Landlord established that the Tenant is responsible for causing damage that required the Landlord to make an insurance claim. The \$1,000.00 is the Landlord's insurance deductible. The Landlord is also awarded recovery of the \$100.00 Application filing fee. The Landlord is authorized to retain the Tenant's \$450.00 security deposit in partial satisfaction of these awards.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. 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 Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **\$650.00**. 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 final and binding on the Parties, unless otherwise provided under the Act, and 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: May 26, 2021

Residential Tenancy Branch