



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 landlord's 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 damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fee for this application from the opposing party pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:50 a.m. to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. 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 attended the hearing, assisted by an articulated student, FA. The landlord testified she served the tenant with the Notice of Dispute Resolution Proceedings package by registered mail on July 12, 2021. The landlord provided a tracking number as proof of service, recorded on the cover page of this decision. The tenant is deemed served with the Notice of Dispute Resolution Proceedings package on July 17, 2021, five days after July 12th in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

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

Can the landlord recover compensation?

Can the landlord recover the filing fee?

Background and Evidence

The landlord gave the following undisputed testimony. The first fixed term tenancy began in 2017 with rent set at \$3,500.00 per month, payable on the first day of each month. A security deposit of \$1,750.00 was collected by the landlord which she continues to hold. The tenancy agreement was renewed yearly, with the most recent tenancy agreement being entered into for May 1, 2020. Rent is to be paid on the first day of each month according to this tenancy agreement, provided as evidence by the landlord.

In May of 2019, the tenant had booked the elevator with the strata corporation to move some items into the rental unit. The landlord was unaware of the booking and discovered the strata corporation charged the landlord a fee of \$200.00 for the booking of the elevator. An invoice from the strata was provided as evidence. The landlord texted the tenant advising the tenant she had to pay the fee. On December 12, 2019, the tenant acknowledged the fee, stating "...I'll have to take care of the move fee a bit later. I apologize for the delay".

On May 28, 2021, the landlord served the tenant with a One Month Notice to End Tenancy for Cause ("notice") by leaving a copy in the tenant's mail box. A signed, witnessed proof of service document was provided as evidence. The notice states the reason for ending the tenancy is for repeated late rent. A ledger, entitled "payment history of tenant" was provided as evidence showing the tenant consistently paid rent late.

The landlord testified the tenant has not filed or served her with any Application for Dispute Resolution to dispute the notice. The tenant has paid rent subsequent to receiving the notice, however each month, the landlord has texted the tenant advising her the rent was accepted solely for "use and occupancy" of the rental unit. The landlord still wants the tenancy to end. The tenant is fully up to date in her rent payments and utility payments.

Analysis

The tenant is deemed to have received the One Month Notice to End Tenancy for Cause on May 31, 2021, the third day after it was left in the tenant's mail box in accordance with sections 88 and 90 of the *Act*.

Sections 47(4) and (5) of the *Act* state:

(4) A tenant may dispute a Notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the Notice.

(5) If a tenant who has received a Notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and
(b) must vacate the rental unit by that date.

Based on the landlord's undisputed evidence and the Notice before me, I find the tenant was served with an effective notice. Although the tenant had the opportunity to do so, she did not file an application to dispute the Notice within 10 days or attend this scheduled hearing. The tenant is therefore conclusively presumed to have accepted that the tenancy ends on June 30, 2021, the effective date of the Notice and must move out of the unit. As the effective date on the Notice has already passed, the landlord is entitled to an order of possession effective two days after service upon the tenant pursuant to section 55 of the *Act*.

Section 7(1)(f) of the Residential Tenancy Regulations states a landlord may charge a move-in or move-out fee charged by a strata corporation to the landlord. The landlord has provided undisputed evidence and compelling documentary evidence to satisfy me the tenant incurred the \$200.00 fee to book the elevator with the strata in May of 2019. The tenant has not paid the fee to the landlord in violation of section 7 of the Regulations. I award the landlord \$200.00 in accordance with section 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

The landlord continues to hold the tenant's security of \$1,750.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$300.00 of the tenant's security deposit in full satisfaction of the monetary claim.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

Pursuant to sections 67 and 72, the landlord may retain \$300.00 of the tenant's security deposit.

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: August 10, 2021

Residential Tenancy Branch