



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL-4M, MNRL-S, 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 landlord's use of property pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The landlord and his agent, M.K. attended the hearing via conference call and provided undisputed affirmed testimony. The tenants did not attend.

The landlord was advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

The landlord stated that each of the tenants were served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on May 21, 2021. The landlord submitted copies of the Canada Post Receipt and 3 Tracking labels as confirmation of service. The landlord stated that an online search of the Canada Post Website shows that all 3 packages were "unclaimed" by the tenants. I accept the undisputed affirmed evidence of the landlord and find that all 3 tenants have been sufficiently served. Despite not claiming the package and attending the hearing, the tenants are deemed served as per section 90 of the Act.

At the outset, the landlord clarified that he now seeks a higher monetary claim as per submitted evidence "owner's list". However, after some discussions the landlord clarified that an amendment to the application for dispute was not filed or served to the tenant. The landlord then decided to withdraw the monetary portion of his application stating that he would re-apply for it separately. On this basis, the hearing proceeded on the landlord's application for an order of possession and recovery of the \$100.00 filing fee.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

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

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 applicant's claim and my findings are set out below.

The landlord provided undisputed testimony that the tenants were served with a 4 month notice to end tenancy for Demolition, Renovation, or Conversion to Another use dated November 27, 2020 by posting it to the rental unit door on November 27, 2020.

The landlord also submitted a completed proof of service document which confirms service with a witness.

The 4 month notice sets out an effective end of tenancy date of March 31, 2021 and the reason selected as:

Perform renovations or repairs that are so extensive that the rental unit must be vacant.

No permits and approvals are required by law to do this work.

The planned work:

Details of Work:

Kitchen

remove entire kitchen to studs& complete renovation

Bathroom(only one)

remove entire bathroom to studs& complete renovation

Roof

remove roof- raise- add a room in loft potentially

Walls/flooring/windows

all new drywall/flooring& windows

The Owner purchased this property on November 16th, 2020 with the existing tenancy remaining. He aske me to issue a 4 month notice by end of month, for tenants to vacate by March 31, 2021. He has to do work to the foundation, tear off the roof and re-do it, as well as raise it, new electrical (heating does not work properly), new plumbing, new kitchen and bathroom. The electrical, roof and foundation are conditions of his temporary insurance coverage. Walls need to be opened up etc.

[reproduced as written]

Analysis

In this case, I accept the undisputed affirmed evidence of the landlord and find that the tenants were properly served with the 4 month notice dated November 27, 2020 by posting it to the rental unit door. Despite not attending the hearing the tenants are deemed served with the 4 month notice based upon the landlord's undisputed evidence.

I find that the landlord has also clarified the details of work to my satisfaction as he has a general plan for renovations and that this would be subject to change upon the full access and inspection of the rental property.

Pursuant to Section 49 (9) I find that the tenant was served with this 4 month notice dated November 27, 2020 and is conclusively presumed to have accepted that the tenancy ended on the effective end of tenancy date of March 31, 2021 and must vacate

the rental unit as they have failed to file an application to dispute it. As the tenants still occupy the rental unit, I grant the landlord an order of possession under section 55 of the Act to be effective 2 days after it is served upon the tenants.

The landlord 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 \$100.00.

These orders must be served upon the tenants. Should the tenants 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 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: September 14, 2021

Residential Tenancy Branch