Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDL-S, FFL

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order of Possession for Cause, based on a One Month Notice to End Tenancy for Cause dated April 25, 2021; for a monetary order for damages of $6,627.60, retaining the security deposit to apply to the claim; and to recover the $100.00 cost of their Application filing fee.

The Landlords, J.B. and A.B., 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 45 minutes and was monitored throughout this time. The only persons to call into the hearing were the Landlords, 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 Landlords.

Early in the hearing, the Landlords said that they were withdrawing their monetary claim for this Application. Given their withdrawal of this monetary claim, I advised the Landlords of their obligations regarding the return or retention of the security and pet damage deposits at the end of the tenancy. I noted that pursuant to section 38 of the Act, a landlord must do one of two things at the end of the tenancy. Within 15 days of the later of the end of the tenancy and receiving the tenant's forwarding address in writing, the landlord must: **(i)** repay any security deposit and/or pet damage deposit; **or (ii)** apply for dispute resolution claiming against the security deposit and/or pet damage deposit. If the landlord does not do one of these actions within this timeframe, the landlord is liable to pay double the security and/or pet damage deposit(s) pursuant to section 38(6) of the Act.

I explained the hearing process to the Landlords and gave them an opportunity to ask questions about the hearing process. During the hearing the Landlords were given the opportunity to provide their 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 Landlords testified that they served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on June 24, 2021. They also said they served their evidence to the Tenant by registered mail on September 5, 2021. The Landlords provided Canada Post tracking numbers as evidence of service of these packages. Based on the evidence before me, I find that the Tenant was deemed 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 Landlords in the absence of the Tenant.

Preliminary and Procedural Matters

The Landlords provided their email address in the Application, and they provided the Tenant's email address in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and also mailed to the Tenant, and any Orders would be sent to the appropriate Party as such.

I advised the Landlords that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised them that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately. The Landlords affirmed that they were not recording the hearing.

Issue(s) to be Decided

- Are the Landlords entitled to an order of possession?
- Are the Landlords entitled to recovery of the Application filing fee?

Background and Evidence

The tenancy agreement states, and the Landlords confirmed in the hearing that the periodic tenancy began on May 15, 2020, with a monthly rent of $1,450.00, due on the

first day of each month. The Landlords confirmed that the Tenant paid them a security deposit of $725.00, and a pet damage deposit of $725.00. They said that they still hold the deposits in full.

The Landlords submitted a copy of the One Month Notice that they said they served on the Tenant. The One Month Notice was signed and dated April 25, 2021, it has the rental unit address, it indicates that it was served by attaching it to the rental unit door on April 25, 2021, with an effective vacancy date of June 1, 2021, automatically corrected to June 30, 2021 by section 53 of the Act.

The One Month Notice was served on the grounds that the Tenant significantly interfered with or unreasonably disturbed another occupant or the Landlords; seriously jeopardized the health or safety or lawful right of another occupant or the Landlords; put the Landlords' property at significant risk; the Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the unit or property; the Tenant has not done the required repairs of damage to the unit/property; and she has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In the Notice of Hearing, the Landlords described the situation, as follows:

> March 23, 2021, rental unit was inspected. Breach of tenancy agreement by tenant. She smoked cigarettes on the property and unit was extremely unsanitary with garbage, fly strips, cat feces, cat urine, etc... Warning letter was given. April 16, 2021, rental unit was inspected and was in unsanitary condition. Cat urine and feces stained carpets were still present and had not been cleaned as Landlord instructed. Landlords concerned about the damage to the unit, health and safety from filth. .
>
> [reproduced as written]

In the hearing, the Landlords gave me much the same evidence in their testimony. They said:

> We have a tenant renting a separate unit in the home. She has breached the tenancy agreement – smoking on the property. Basically, the terms of the tenancy agreement were breached; specifically, no smoking and keeping the unit sanitary, and both of these instances contributed to damaging the property. Upon inspection, the first being March 23, there was garbage, cat feces and urine-stained carpets, cigarette butts, and an awful stench. That's one of the reasons that we want an order of possession.

We provided a warning letter on March 23, and did another inspection later to see if the condition had improved. On April 16 we did an inspection, and we took photos, and we noticed that the condition had not improved. Cat urine, feces, stained carpeting, garbage and it still smelled of rotten food. Then we served a 30-day eviction notice that we attached to her door. That was for a June 1st eviction, and I spoke with her afterwards about this on April 26th. This is the reason for our wanting her removed.

The Landlords submitted a warning letter that they said they gave to the Tenant on March 23, 2021. This letter states:

Warning Letter of Breaching Rental Agreement

Date: March 23, 2021

To:
[Tenant]
[rental unit address]

Hi [Tenant],

This is a warning letter for breaching the terms of your rental agreement at [residential property address]. Upon inspection on March 23, 2021, Landlord noticed the breach of smoking on the property and in the unit and the unit and property are designated as non-smoking as per rental agreement. Evidence includes cigarette butts, ashes and burn marks. Damage has been caused to the door and siding from butting out cigarettes.

In addition, upon causal inspection, the unit was found to be unsanitary with garbage, fly strips, cat feces and cat urine among other things.

Accordingly, regular inspections of the property will now commence with 24 hours' notice to the tenant.

Should smoking and unsanitary handling of the property continue, the landlord will end the tenancy.
Sincerely,

[Landlord, address, telephone]

In the hearing, the Landlords said:

> When I served her the warning letter, she was smoking on the property. I gave her the warning letter and she mentioned that she would have to read it over and look at it, and she would basically comply with it. She said she would stop smoking, make the property better, although she was a little surprised at the comment that it was unsanitary. But she agreed that she would make the property in better condition and stop smoking – burn marks on the door and siding and cigarette butts everywhere.

The Landlords said in the hearing that the Tenant did not comply with their warning letter to stop smoking and improve the condition of the rental unit.

The Landlords submitted photographs that they said were of the unit at the start of the tenancy, and photographs of the condition of the rental unit before they served the One Month Notice. I reviewed photographs labelled “Move_In_Day_” “1 through 5”. These included photographs of clean, empty rooms of a basement suite.

The more current photographs of the condition of the rental unit include:

- messy bedrooms (but no damage, per say);
- cat feces on the carpeted floor;
- cat food strewn around a shelf;
- cigarette butt and other garbage on the carpeted floor;
- cigarette butt on kitchen floor;
- cat hairball on carpeted floor;
- clothing, dirt, debris on carpeted floor; and
- sizeable stains on carpeted floors.

Analysis

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 One Month Notice on April 28, 2021, three days after it was posted on the rental unit door.

Section 47(5) of the Act states that if a tenant who has received a One Month Notice

does not apply for dispute resolution within 10 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 One Month Notice, I find that she is conclusively presumed under section 47(5) of the Act to have accepted the One Month Notice, and I find that the tenancy, therefore, ended on June 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.

Given their successful Application, I also find that the Landlords are entitled to recovery of their $100.00 Application filing fee, pursuant to section 72 of the Act. The Landlords are authorized to retain $100.00 from the Tenant's security deposit in complete satisfaction of this award.

Conclusion

The Landlords are successful in their Application for an Order of Possession of the rental unit, as the Tenant failed to dispute the One Month Notice, and therefore, is conclusively presumed to have accepted the One Month Notice, pursuant to the Act. The Landlords withdrew their claim for a monetary order from the Tenant in this Application; therefore, I dismiss that claim with leave to reapply. This Decision does not affect any applicable limitation deadlines that may apply.

Given their success in this Application, the Landlords are awarded recovery of the $100.00 Application filing fee from the Tenant. The Landlords are authorized to deduct $100.00 from the Tenant's $725.00 security deposit in complete satisfaction of this award.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenant. The Landlords are 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.

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: October 06, 2021

Residential Tenancy Branch