



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDCL-S, OPN

Introduction

The Landlord applies for the following relief:

- An order for possession pursuant to s. 55 of the *Residential Tenancy Act* (the “Act”) after issuing a One-Month Notice to End Tenancy signed May 19, 2021;
- An order for monetary compensation pursuant to s. 67 of the *Act*; and
- An order for possession pursuant to a tenant’s notice to end the tenancy.

M.M. appeared on his own behalf as Landlord. The Tenant did not appear, nor did someone appear on their behalf. Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled at 9:30 AM on October 22, 2021 and lasted 25 minutes. As the Tenant did not attend, the hearing was conducted in their absence in accordance with Rule 7.3.

The Landlord affirmed to tell the truth during the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. I advised the parties of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Landlord confirmed that he was not recording the hearing.

The Landlord advised having served a One-Month Notice to End Tenancy signed May 19, 2021 by way of registered mail sent on the same date. The Landlord has provided proof in the form of a tracking receipt. It appears the package was returned to the Landlord. Policy Guideline #12 states the following with respect to service via registered mail:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the

deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

The Landlord is entitled to serve the Notice to End Tenancy by way of registered mail in accordance with s. 88 of the *Act*. Policy Guideline #12 is clear that failing to pick up registered mail sent to the correct address does not impact the deemed service provisions of the *Act*. I find that the One-Month Notice to End Tenancy signed May 19, 2021 was served in accordance with s. 88 of the *Act*. I deem the Tenant to have been served with the Notice to End Tenancy on May 24, 2021 pursuant to s. 90.

The Landlord indicated he served the Notice of Dispute Resolution and evidence on the Tenant by posting it to the Tenant's door on July 16, 2021 and sending it via registered mail on July 16, 2021. I find that the Notice of Dispute Resolution and evidence were served in accordance with s. 89 of the *Act*. Pursuant to s. 90(c), I deem the Tenant to have been served with the Landlord's application materials on July 19, 2021.

Issue(s) to be Decided

- 1) Whether the Landlord is entitled to an order for possession?
- 2) What amount, if any, is the Landlord entitled to for monetary compensation?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Landlord advised that the tenancy began on June 15, 2016. Rent is currently \$1,458 due on the first day of each month. The Landlord currently holds a security deposit of \$650.00 in trust for the Tenant. The Landlord provides a copy an updated tenancy agreement signed on March 1, 2021 as well as an addendum that was signed on June 15, 2016, as evidence.

The Tenant continues to reside within the rental unit.

The Landlord advises issuing the One-Month Notice to End Tenancy in May 2021 after a series of demand letters were sent to the Tenant to correct a series of issues

addressed by the Landlord. The Landlord confirmed having not received an application from the Tenant disputing the One-Month Notice to End Tenancy signed May 19, 2021.

The Landlord makes claim for the following compensation:

- Landscaping services: \$250.01
 - Repair to roof shingles: \$130.00
 - Paint for bedroom: \$425.00
 - Home pesticide for fleas: \$150.00
- TOTAL** \$955.01

The only receipt submitted by the Landlord is in relation to the landscaping services, with an invoice provided dated May 21, 2021. The tenancy agreement states that the Tenant is to cut the grass. The Landlord provides copies of photographs showing the length of the grass prior to being cut, which the Landlord says was 3 feet tall.

The other amounts claims were estimates as the Landlord has not repaired the roof, painted the bedroom, or treated the house for fleas. As mentioned previously, the Tenant continues to reside within the rental unit.

Analysis

The Landlord seeks an order for possession and compensation.

Pursuant to s. 47, a landlord may end a tenancy with cause after issuing notice effective no earlier than one-month after it is received by the tenant and the day before the rent is due as per the tenancy agreement.

I find that the One-Month Notice to End Tenancy signed May 19, 2021 complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-33).

When a tenant receives a One-Month Notice to End Tenancy issued under s. 47 they must, within 10-days, dispute the notice with the Residential Tenancy Branch. Indeed, at the top of the Notice to End Tenancy it states the following:

You have the right to dispute this Notice **within 10 days** of receiving it, by filing an Application for Dispute Resolution with the Residential Tenancy Branch

online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

In this case, the Tenant failed to file a dispute at all. Given this, s. 47(5) is engaged and I find that the Tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit on the effective date. In this case, the effective date was June 30, 2021. As the Tenant continues to reside within the rental unit, I find they are overholding and grant an order for possession.

The Landlord also seeks compensation. At the hearing, I advised that the claims for repairing the roof, painting, and treating for fleas was premature as the Landlord has not, in fact, incurred these expenses and the Tenant continues to reside within the rental unit. The *Act* does not permit for the prospective awarding of compensation. The reason is two-fold: one, the amounts are speculative; and two, the *Act* only permits compensation under s. 67 where a party has breached an obligation imposed by the tenancy agreement, the *Act*, or the Regulations. As the Tenant continues to reside within the rental unit, issues of compensation for damage to the property is better addressed after the tenancy has ended. I dismiss this portion of the Landlord's claim with leave to reapply.

The final aspect of the monetary claim are the expenses incurred for landscaping services. Given my findings with respect to the Landlord's claim for damages, I am inclined to dismiss this portion of the Landlord's claim with leave to reapply. I am cognizant of Rule 2.9 of the Rules of Procedure, which prohibits an applicant from dividing a claim. The reason this rule exists is because of the maximum jurisdiction of the Residential Tenancy Branch is \$35,000.00. To permit a party to seek compensation piecemeal by dividing their claim may result in total amounts above the \$35,000.00 cap. Based on the Landlord's application and his submissions, it appears that there will likely be other aspects to the Landlord's claim for compensation for property damage which is best addressed at the same time.

Accordingly, I dismiss the Landlord's claim for monetary compensation in its entirety with leave to reapply.

Conclusion

I grant the Landlord an order for possession. The Tenant provide vacant possession of the rental unit to the Landlord no later than **two (2) days** after being served with the order for possession.

I dismiss the Landlord's claim for monetary compensation with leave to reapply.

It is the Landlord's obligation to serve the order for possession on the Tenant. If the Tenant does not comply with the order for possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that Court.

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: October 25, 2021

Residential Tenancy Branch