



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL MNDCL-S FFL

Introduction

The landlords seek an order of possession based on an undisputed notice to end tenancy pursuant to section 55(2)(b) of the *Residential Tenancy Act* ("Act"). They also claim compensation from the overholding tenant pursuant to section 57(3) of the Act, and recovery of the filing fee pursuant to section 72 of the Act.

Both parties attended the hearing. No service issues were raised, with the tenant acknowledging receipt of various packages of documents from the landlords. It should be noted that while the tenant asked why I would not receive any evidence or documentation from her after the hearing, it is important to note that the tenant had ample opportunity to submit documentary evidence in advance of the hearing.

Issues

Whether the landlords are entitled to

- (1) an order of possession,
- (2) compensation for an overholding tenant, and
- (3) compensation for the cost of the application filing fee.

Background and Evidence

Relevant oral and documentary evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only the evidence needed to explain the decision is reproduced below.

The tenancy began on March 1, 2008. Monthly rent is \$873.00, and the tenant paid a \$337.50 security deposit. A copy of the written tenancy agreement is in evidence.

On October 10, 2021, the landlords served a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") by both posting a copy of the Notice on the door of the rental unit and by serving a copy of the Notice by Canada Post registered mail.

Proof of service documentation is in evidence, related to both service methods. A copy of the Notice is in evidence. To date, the tenant has not disputed the Notice and the landlords seek an order of possession on this basis. During the hearing, the tenant acknowledged obtaining a copy of the Notice that was posted on the door.

The tenant testified about attempts made to extend the end of tenancy date with the landlord, but to no avail. The landlord testified that various options to extend the tenancy and to rescind the Notice were offered, but that the tenant had not accepted any of those options. He confirmed during the hearing that the landlords sought an order of possession.

In addition, the landlords seek compensation related to the tenant's overholding of the rental unit. They seek \$873.00 which is equivalent to monthly rent. The landlord testified that the tenant has not paid any rent since January 2022. A Monetary Order Worksheet was submitted into evidence. No additional evidence regarding the monetary claim was in evidence, however. The tenant disputed this and said that she "usually pays the rent." The tenant also briefly testified about various harassing and false accusations being made by the landlords about her.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In this application, the landlords seek an order of possession based on the Notice not being disputed and because the tenant has refused to vacate the rental unit.

The Notice was issued under section 49(3) of the Act. Namely, that the "landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit." The Notice clearly indicates that this is the reason for it being given.

The Notice was served on October 10, 2021 by both registered mail and by being posted on the door. Both methods of service are compliant with section 88 of the Act.

Further, having reviewed the Notice it is my finding that it complies with form and content requirements set out in section 52 of the Act.

Section 49(9) of the Act states that if a tenant receives a notice to end tenancy under section 49 of the Act and they have not disputed the Notice within 15 days of receiving the Notice then 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.”

Section 55(2)(b) of the Act permits a landlord to request an order of possession when “a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.”

Taking into consideration all of the evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their application for an order of possession based on the undisputed Notice.

An order of possession is granted and issued in conjunction with this decision, to the landlord. The effective date of the Notice shall be two days after service of the order of possession on the tenant, including any deeming provision under section 90 of the Act.

In respect of compensation related to overholding, section 57(1) of the Act defines an “overholding tenant” to mean a tenant who continues to occupy a rental unit after the tenant's tenancy is ended. Moreover, subsection 57(3) of the Act states that a landlord “may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.”

In this case, the landlord sought compensation for rent for January 2022. A Monetary Order Worksheet was submitted, but no actual documentary evidence of non-payment for rent or otherwise was tendered. Given that the tenant disputed the landlords' claim regarding her not paying rent, it is my conclusion that the landlord has not proven, on a balance of probabilities, that they are entitled to compensation. This aspect of their application is dismissed.

Last, section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlords succeeded in their application in respect of the order of possession, they are granted \$100.00 in compensation for the filing fee.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I order that the landlords may retain \$100.00 of the tenant’s security deposit in satisfaction of the above-noted award.

Conclusion

The landlord’s application for an order of possession and to recover the cost of the application filing fee is granted.

The landlord’s claim for compensation is dismissed, without leave to reapply.

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act. A party’s right to appeal the decision is limited to review grounds provided under section 79 of the Act, or, by way of an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: April 4, 2022

Residential Tenancy Branch