



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for cause, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 38 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The hearing began 9:30 a.m. and ended at 10:08 a.m. I monitored the teleconference line throughout this hearing. 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 people who called into this teleconference.

The landlord confirmed her name and spelling. She stated that she owns the rental unit and confirmed the rental unit address. She provided her email address for me to send this decision to her after the hearing.

At the outset of this hearing, I informed the landlord that she was not permitted to record this hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules"). The landlord affirmed, under oath, that she would not record this hearing.

I explained the hearing process to the landlord. She had an opportunity to ask questions, which I answered. She stated that she was ready and wanted to proceed with this hearing. She did not make any adjournment or accommodation requests.

The landlord stated that she served the tenant with the landlord's application for dispute resolution, notice of hearing, and first evidence package on January 17, 2022, by way of registered mail to the rental unit where the tenant is still residing. She provided a Canada Post receipt and confirmed the tracking number verbally during this hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application, notice of hearing, and first evidence package on January 22, 2022, five days after its registered mailing.

The landlord stated that she served the tenant with her second evidence package, by way of sliding a copy under the tenant's rental unit door. She said she could not recall the date. I informed the landlord that I could not consider her second evidence package at the hearing or in my decision because she could not provide a service date and sliding a copy under the tenant's door is not permitted by section 88 of the *Act*. The landlord confirmed her understanding of same.

The landlord testified that the tenant was served with the landlord's One Month Notice to End Tenancy for Cause, dated December 10, 2021 ("1 Month Notice") on the same date, by way of posting to the tenant's rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 1 Month Notice on December 13, 2021, three days after its posting.

Issues to be Decided

Is the landlord entitled to an Order of Possession for cause?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the tenant's security deposit?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced

here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on March 1, 2012. Monthly rent in the current amount of \$486.88 is payable on the first day of each month. A security deposit of \$237.50 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

A copy of the 1 Month Notice was provided for this hearing. The landlord confirmed that the 1 Month Notice, which has an effective move-out date of January 31, 2022, was issued to the tenant for the following reasons:

- *Tenant is repeatedly late paying rent.*
- *Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the landlord.*
- *Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.*

The landlord stated the following facts. She seeks an order of possession against the tenant. The tenant was late paying rent more than three times during this tenancy, as it has been occurring for approximately two years. The tenant was late paying rent on January 5, February 2, March 3 and 16, April 13 and 27, no payment in May, June 8, July 6, August 31, September 14, October 4, no payment in December, all in the year 2021. The tenant was late paying rent on January 6, payment was made on February 1 but it was not the full rent due, and no payment was made for April, all in the year 2022.

The landlord testified regarding the following facts. She provided bank statements dating back to the year 2020, indicating that the tenant paid rent late repeatedly and more than three times during this tenancy. She provided a rent receipt from March 2022, indicating "use and occupancy only" and it "does not extend the tenancy agreement," which she gave to the tenant. She has been issuing these rent receipts with the above wording, to the tenant since February 2022, after talking to the RTB. She allowed the tenant to stay longer even though she paid rent late because the landlord and the tenant used to be friends, so she gave the tenant the "benefit of the doubt." The landlord has made it clear to the tenant that she wants to end this tenancy. She issued another 1 Month Notice on September 30, 2021 to the tenant, and a Ten

Day Notice for Unpaid Rent or Utilities, dated January 6, 2022 (“10 Day Notice”) on the same date for unpaid rent of \$973.76 due on January 1, 2022, to the tenant.

The landlord stated the following facts. The rent was increased effective July 1, 2019, pursuant to a Notice of Rent Increase, dated April 1, 2019 (“NRI”), from \$475.00 to \$486.88, an increase of \$11.88. This notice was served to the tenant on April 1, 2019. This was the first rent increase since the tenancy began on March 1, 2012, as per the NRI. The tenant has been overpaying rent of \$487.00 on a monthly basis, since July 1, 2019, as the rent is only \$486.88. The landlord has not calculated the overpayment in rent made by the tenant.

The landlord seeks a monetary order for the unpaid rent for April 2022, which she said the tenant has not paid at all. She stated the amount is \$486.88, not including the overpayment in rent. The landlord seeks to retain the tenant’s security deposit of \$237.50 against the rent owed, and recovery of the \$100.00 filing fee.

Analysis

On a balance of probabilities and for the reasons stated below, I find that the landlord issued the 1 Month Notice for a valid reason. I accept the undisputed testimony of the landlord.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement. In this case, the landlord indicated that the rent is due on the first day of each month. The landlord provided a written tenancy agreement indicating that rent is due on the first day of each month.

Residential Tenancy Policy Guideline 38 states that “three late payments are the minimum number sufficient to justify a notice...” The landlord provided undisputed evidence that the tenant was late paying rent more than three times during this tenancy in the years 2021 and 2022. The landlord provided affirmed undisputed testimony, bank records, and rent receipts to show the late rent payments.

Although the tenant overpaid rent by \$12.00 for July 2019 and \$0.12 each month since July 2019, this is only a total of \$15.96 over 33 months. The tenant was still late paying full rent each month to the landlord.

Accordingly, I find that the tenant was repeatedly late paying rent. I find that the landlord’s 1 Month Notice was issued for a valid reason. As I have found one of the

three reasons to be valid, I do not need to examine the other two reasons on the 1 Month Notice.

The tenant has not made an application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice. In accordance with section 47(5) of the *Act*, the failure of the tenant to file an application within ten days led to the end of this tenancy on January 31, 2022, the effective date on the 1 Month Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by January 31, 2022. As this has not occurred and the effective date has long passed, I find that the landlord is entitled to a two (2) Order of Possession, pursuant to section 55 of the *Act*. The tenant has not paid rent for April 2022, so she is not entitled to possession of the rental unit until the end of the month. I find that the landlord's 1 Month Notice complies with section 52 of the *Act*.

I find that the landlord did not waive her right to enforce the 1 Month Notice by accepting rent from the tenant after the effective date of the notice. The landlord did not withdraw the 1 Month Notice and she continued to pursue an order of possession against the tenant at this hearing. I accept the landlord's undisputed affirmed testimony that she issued rent receipts to the tenant, indicating "use and occupancy only" and it "does not extend the tenancy agreement" from February to March 2022.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence that the tenant failed to pay rent for April 2022 to the landlord. I find that the landlord is entitled to the entire month of rent for April 2022, despite the fact that this hearing was held on April 5, 2022, since rent is due on the first day of the month, as per the written tenancy agreement, and the tenant continues to reside in the rental unit.

The landlord issued an NRI for an increase of \$11.88 in 2019, when the legal rent increase amount allowed by the RTB was 2.5%. At that time, the tenant's rent was \$475.00 as per the parties' written tenancy agreement, since the rent had not been increased previously. The rent was increased from \$475.00 to \$486.88.

The landlord stated that the NRI was dated and served to the tenant on April 1, 2019, so I find it is effective as of August 1, 2019 (not July 1, 2019, as claimed by the landlord). The NRI can be corrected to comply on the earliest date that it is effective, as per

section 42(4) of the *Act*. The landlord is required to issue and serve the NRI with at least three full calendar months notice for it to be effective, per section 42(2) of the *Act*. Therefore, the tenant overpaid rent of \$12.00 in July 2019, since she paid \$487.00 instead of \$475.00, the original rent before the rent increase.

I find that the tenant owes \$486.88 for April 2022 rent. However, the tenant paid \$487.00 instead of \$486.88 for rent each month, which is an overpayment of \$0.12 each month from July 2019 to March 2022. This is an overpayment of \$3.96 total (33 months x \$0.12 cents). The tenant also overpaid \$12.00 total for the month of July 2019. I have deducted \$15.96 total from the \$486.88 owed for April 2022 rent, which leaves a balance of \$470.92 owed by the tenant to the landlord. The overpayment in rent can be deducted as per section 43(5) of the *Act*.

I find that the landlord issued a legal NRI in the approved form to the tenant, but it has been corrected for the date and rent amount, as noted above in this decision, pursuant to sections 42 and 43 of the *Act*.

As the landlord was successful in this application, I find that she is entitled to recover the \$100.00 filing fee from the tenant.

The landlord continues to hold the tenant's security deposit of \$237.50. Over the period of this tenancy, no interest is payable on the deposit. The landlord applied to retain the tenant's security deposit in this application. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's entire security deposit of \$237.50 in partial satisfaction of the monetary claim. I issue a monetary order for \$333.42 for the balance, to the landlord.

Conclusion

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

I order the landlord to retain the tenant's entire security deposit of \$237.50 in partial satisfaction of the monetary claim.

I issue a monetary order in the landlord's favour in the amount of \$333.42 against the tenant. 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 Small Claims Division of the Provincial Court 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: April 05, 2022

Residential Tenancy Branch