



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FJL HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNRL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's 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 January 28, 2022; for a monetary order for unpaid rent of \$1,100.00 from January and February 2022; and to recover the \$100.00 cost of their Application filing fee. However, at the onset of the hearing, the Agent indicated that the Tenant only owes \$25.00 in unpaid rent as of the hearing date.

The Tenant and an agent for the Landlord, J.L. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. 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.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Tenant said she had received the Application and the documentary evidence from the Landlord and had reviewed it prior to the hearing. The Tenant confirmed that she had not submitted any documentary evidence to the RTB or to the Landlord.

Preliminary and Procedural Matters

The Agent provided the her email address in the Application and the Tenant provided

hers in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on July 1, 2018, and ran to June 30, 2019, and then operated on a month-to-month basis. They agreed that the tenancy agreement requires the Tenant to pay the Landlord a monthly rent of \$1,000.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$500.00, and no pet damage deposit.

The One Month Notice was signed and dated January 28, 2022, it has the rental unit address, it was served by attaching a copy to the rental unit door on January 28, 2022, with an effective vacancy date of February 28, 2022, and it was served on the grounds that the Tenant is repeatedly late paying rent.

The Tenant said she did not receive the One Month Notice until she received the Landlord's Notice of Hearing package by registered mail. However, she also acknowledged that she did not dispute the One Month Notice by applying for dispute resolution at that point or later.

The Agent submitted a ledger for the Tenant's rent payments since the beginning of the tenancy, and this shows that the Tenant was repeatedly late paying rent since the start of the tenancy in 2018.

In the hearing, the Tenant said

I apologise for being repeatedly late on rent, but I have a part-time job, and I only get paid when the job is done, and it's not usually on the first. I make my rent my priority.

I usually get paid on the 15th, and sometimes whenever the job is finished. The job doesn't always start on the first, either.

Analysis

Based on the documentary evidence and testimony before me for consideration, and pursuant to section 90 of the Act, I find that the Tenant was deemed served with the One Month Notice on January 31, 2022, three days after it was posted to the door of the rental unit. However, I have considered that the Tenant said she did not receive this One Month Notice, as she believed that someone else must have removed it. I note that the Tenant did say she received a copy of the One Month Notice in the Landlord's Notice of Hearing package, which was served by registered mail on April 26, 2022. I checked the Canada Post website for the tracking number provided by the Agent, and it indicated that the package was delivered to the Tenant on April 28, 2022. However, the Tenant did not dispute the One Month Notice, nor the Landlord's Application.

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 May 31, 2022, one month after it was received by the Tenant.

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 and the Agent testified that \$25.00 of rent has not been paid. **Pursuant to section 55** of the Act, I grant the Landlord an **Order of Possession** which will be **effective two days after service on the Tenant**.

With no evidence to the contrary, I award the Landlord with **\$25.00** for the rent arrears as of the date of the hearing, pursuant to section 67 of the Act.

I also find that the Landlord is entitled to recovery of the **\$100.00** filing fee pursuant to section 72 of the Act.

I find that these monetary awards meet the criteria under section 72 (2) (b) of the Act to

be deducted from the Tenant's security deposit of \$500.00 in complete satisfaction of the Landlord's monetary awards. The Landlord may retain the remainder of the security deposit until 15 days from the later of the end of the tenancy and receiving the Tenant's forwarding address in writing. If the Landlord keeps the remaining security deposit, they must apply for dispute resolution applying the security deposit to the claim. The Landlord is required to apply for dispute resolution, or return the remaining security deposit to the Tenant within 15 days of the later of the end of the tenancy and receiving the Tenant's forwarding address in writing. Please call our office for further clarification of this.

The Landlord is authorized to retain **\$125.00** from the Tenant's \$500.00 security deposit in complete satisfaction of the monetary awards, pursuant to section 67 of the Act.

Conclusion

The Landlord is successful in their Application for an order of possession and a monetary order for rent arrears and recovery of the \$100.00 Application filing fee. The Landlord is authorized to deduct **\$125.00** from the Tenant's \$500.00 security deposit in complete satisfaction of the monetary awards.

Pursuant to section 55 of the Act, I grant an **Order of Possession** to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is 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 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: June 23, 2022

Residential Tenancy Branch