



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDCL-S, FFL

Introduction

This hearing was convened by way of conference call on June 8, 2022 concerning an application made by the landlord seeking an Order of Possession for cause; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The hearing was scheduled to commence on May 6, 2022, at which time the parties attended and the tenant indicated that a dispute had been filed but was not complete and I adjourned this hearing to June 8, 2022 to allow the tenant to complete the application. My Interim Decision was provided to the parties.

The landlord attended with a witness on June 8, 2022, and the tenant attended with a person for support and to assist the tenant. At the commencement of the hearing I determined that the tenant had not completed the application.

Also at the commencement of the hearing on June 8, 2022 the landlord withdrew the application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and therefore I dismiss that application without leave to reapply, and the landlord may not keep the security deposit.

The landlord and the landlord's witness and the tenant each gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give submissions. The tenant has not provided any evidentiary material, and the landlord indicated that all evidence of the landlord has been provided to the tenant with the Notice of Dispute Resolution Hearing and hearing package by registered mail on

February 10, 2022. I accept that, and all evidence provided is considered in this Decision.

Issue(s) to be Decided

The issue remaining to be decided is:

- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that the parties entered into a written tenancy agreement on September 9, 2009 for a month-to-month tenancy commencing September 9. A copy has been provided for this hearing. Rent in the amount of \$575.00 was payable on the 1st day of each month, which has been increased and is now \$589.95 per month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$287.50 as well as a pet damage deposit in the amount of \$287.50, both of which are still held in trust by the landlord. The rental unit is a main floor apartment in a complex containing 3 stories and 14 units. The landlord does not reside on the rental property.

The landlord also testified that on October 11, 2021 the landlord served the tenant personally with a One Month Notice to End Tenancy for Cause and by placing a copy in the tenant's mailbox. A copy has been provided for this hearing and it is dated October 11, 2021 and contains an effective date of vacancy of November 30, 2021. The reasons for issuing it state:

- Tenant has allowed an unreasonable number of occupants in the unit/site/property/park;
- Tenant or a person permitted on the property by the tenant has:
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk;
- 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 or the landlord.

The landlord testified that many complaints have been received from other residents of lots of people coming and going and lots of noise. A police report has been provided for this

hearing, and the landlord testified it speaks of lots of action in the building. The tenant's rental unit is close to the laundry area, and at one point there was something to do with guns and police raided the complex. Another resident complained about the resident's children who play in the building, and when police showed up with guns drawn, it was disturbing. The tenant admitted he had 5 or 6 people at the rental unit with a heavy smell of drugs, and none of them live there.

The tenant has been partying late at night, making noise and other residents say when they walk by the rental unit, the door is open and people are smoking cigarettes. There were 8 complaints about late nights and shooting up drugs in the laundry room. The cleaner found stuff in laundry room. It's an older building and doors opening can be heard. People are also passing stuff through windows.

There is noise at night all the time, and residents doing laundry find people in there. It is constant and still happening.

The landlord's witness (ZK) testified that problems with the tenant have been on-going, and police have been at the rental complex many times, and the landlord has received numerous complaints. The landlord has tried to talk to the tenant and never permitted the tenant to allow his girlfriend to live in the rental unit; the landlord doesn't have any information about the person. The tenant applied to have the girlfriend as an occupant but the landlord rejected that.

There is a mountain of evidence of needles and the tenant admitting he has a problem, and there has been incident after incident, however none of the evidence has been provided for this hearing.

For many years the tenant was a good tenant, however other residents have mental health issues. Written complaints from other residents have been provided for this hearing.

The tenant has a connection with a person who allegedly had a gun on the rental property. The tenant has let the person use the tenant's car in exchange for drugs.

The tenant had agreed to move out and the landlord extended the effective date. The Residential Tenancy Branch suggested giving the tenant a form to sign to mutually agree to end the tenancy. The tenant did not sign a mutual agreement and the tenant has been given opportunities. This is not a new issue and the landlord has been struggling for 18 months; there's no stop to it and major drug use is going on causing a risk to other residents.

During cross examination the witness testified that other residents have advised that police have been there on more than 1 occasion, but the police won't verify it.

The tenant testified that the testimony of the landlord and the landlord's witness is fabricated and none of that happened.

The tenant called police when swat team went to the rental complex because another resident's boyfriend, who was a crack addict would constantly strong-arm the tenant into letting him use the tenant's car. He pulled a gun on the tenant and the police raided the apartment of the other resident. The other resident said it was a cell phone in her boyfriend's hand, but the tenant knows differently. The tenant does not do drugs and told the landlord about the person always coming around the tenant's rental unit stoned and strong-arming the tenant. While the tenant waited for the person to return with the tenant's car, the tenant found the person sitting in the car with the door open in the parking stall doing drugs.

The tenant also testified that he has never once sold drugs out of the window of his apartment or had people in the laundry room. What they found was not a syringe, but the tip of a diabetes test pen. The tenant's wife was diabetic for years and it may have fallen out of her pocket and she died a couple years ago. The tenant was going through his wife's clothing before donating them to a thrift store.

The tenant gave a copy of the police report to the landlord because the landlord wanted to use it to get rid of the other resident's boyfriend who lives above the tenant's rental unit, who is the same guy that tried to get the tenant's car. The police highly over-reacted with a swat team and raided the building. The police report is about an incident that occurred on December 25, 2021, and it was the tenant who called police.

The tenant has been a model tenant for years and a friend of the building manager. Friends of the residents in the suite above the tenant's rental unit hang out behind the building, however they've moved out now. The tenant's rental unit is #3, and the residents of #21 have parties that would go on till sometimes 8:00 or 9:00 a.m., and the noise could be heard down the street.

On March 16 the landlord's manager had been talking calmly with the tenant, and while walking past the tenant's car, and for no reason starting yelling at the tenant and beating his hand on cars yelling that he 's not afraid and broke a window on the outside of the tenant's apartment. The landlord's manager also hit the tenant with his car and dragged the tenant up the street causing numerous injuries. An ICBC claim is pending.

Analysis

Where a tenant is served with a One Month Notice to End Tenancy for Cause, the tenant has 10 days to dispute it by filing and serving the landlord with the Notice of Dispute Resolution Proceeding and other documents as provided by the Residential Tenancy Branch. If the tenant fails to do so, the tenant is conclusively presumed to have accepted the end of the tenancy.

In this case, the tenant commenced but did not finish making an application, and has not served the landlord with any documentation. Therefore, I find that the tenant has not disputed the Notice, and is conclusively presumed to have accepted the end of the tenancy.

The *Residential Tenancy Act* specifies that a notice to end a tenancy given by a landlord must be in the approved form. I have reviewed the One Month Notice to End Tenancy for Cause dated October 11, 2021 and I find that it is in the approved form and contains information required by the *Act*.

The tenant was provided with enough time between the 2 dates of this hearing to complete making the application to dispute the Notice, but failed to do so. Although I find that not all of the allegations of the landlord have been proven, the landlord is entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the landlord as against the tenant in that amount and I order that the landlord be permitted to keep that amount from the security deposit held in trust, or may otherwise recover it by filing the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, the landlord's application for a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the landlord may keep that amount only from the security deposit held in trust.

This order is final and binding and may be enforced.

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 10, 2022

Residential Tenancy Branch