



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Page: 1

DECISION

Dispute Codes CNC, OPC, MNDL-S, MNRL, MNDCL,
OPR-DR, MNR-DR, FFL

Introduction

The tenant disputed a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to section 47(4) of the *Residential Tenancy Act* (“Act”).

By way of a cross-application the landlords seek an order of possession and a monetary order. The landlord has filed two applications, including a direct request application which was scheduled for a participatory hearing on October 4, 2022. The application to be heard on October 4 was brought forward to today’s date and is dealt with in this decision. (As such, the hearing set for October 4, 2022 is hereby cancelled.)

A dispute resolution hearing was convened on September 1 at 9:30 AM. The landlords attended the hearing, while the tenant did not. The hearing ended at 9:49 AM. Given that this hearing would address the tenant’s application, and as the tenant was provided with a Notice of Dispute Resolution Proceeding by the Residential Tenancy Branch on May 11, 2022, it is my finding that the tenant had the required documentation necessary for her to participate in the dispute resolution process.

The parties were affirmed, no service issues were raised, and Rule 6.11 of the Residential Tenancy Branch’s *Rules of Procedure* was explained.

Issues

1. Are the landlords entitled to an order of possession?
2. Are the landlords entitled to compensation?

Background and Evidence

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

The tenancy began on April 30, 2021 and monthly rent is due in bi-weekly payments of \$679.00. The tenant paid a \$725.00 security deposit. There is a copy of the written tenancy agreement in evidence.

From the start of the tenancy, the tenant has paid rent late 16 out of 19 times that rent was due (as of April 2022). A rent payment ledger was submitted into evidence, showing the tenant's late rent payment history. On April 25, 2022 the landlords gave the tenant the Notice. It was served by being left in the tenant's mailbox. A copy of the Notice is in evidence.

Since the landlords served the Notice on the tenant, the tenant has decided to stop paying rent altogether. She now owes the landlords \$5,432.00 in rent.

In addition, the landlords seek compensation for \$1,000.00 in bylaw strata fines. Copies of the strata bylaw fine correspondence was submitted into evidence. The fines were incurred by the tenant's frequent nuisance, noise complaints, a security door being left ajar, and other unauthorized activities. The tenant has a copy of the strata bylaws.

The tenant has, without written authorization from the landlords, changed the lock to the rental unit. Changing the lock back will cost the landlords \$76.03. Documentary evidence regarding the cost of the new lock is in evidence.

A few additional claims for compensation related to damaged property cannot be considered at this time. As I explained to the landlords, they remain at liberty to make a new application for dispute resolution claiming for any costs or losses related to any damage caused by the tenant to the rental unit after the tenancy has ended.

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.

1. Notice to End Tenancy for Cause

The Notice was issued under section 47(1)(b) of the Act for “the tenant is repeatedly late paying rent.” *Residential Tenancy Policy Guideline 38* sets out that “Three late payments are the minimum number sufficient to justify a notice under these provisions.”

In this case, the landlords’ sworn oral and documentary evidence persuades me on a balance of probabilities that the tenant has been repeatedly late paying rent. The landlords notified the tenant that they would no longer accept late rent. In response, the tenant chose to stop paying rent altogether.

Taking into consideration all of the undisputed, sworn oral and documentary evidence before me, it is my finding that the landlords have proven on a balance of probabilities the ground on which the Notice was given. Further, having reviewed the Notice, I find that it complies with form and content requirements under section 52 of the Act.

The tenant’s application to cancel the Notice is dismissed, and the landlords are granted an order of possession of the rental unit pursuant to section 55(1)(b) of the Act. A copy of the order of possession is issued in conjunction with this decision, to the landlords. The landlords must serve a copy of the order of possession on the tenant.

If the tenant refuses to comply with my order of possession and vacate the rental unit within two (2) days of being served the order, the landlords may enforce the order of possession in the Supreme Court of British Columbia. The tenant will be additionally liable for all associated court and bailiff costs.

2. Compensation

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement. In this application, the sworn, undisputed oral and documentary evidence persuades me to find that the tenant has not paid rent as required. The tenant owes \$5,432.00 in rent arrears.

The tenant appears to have broken various strata bylaws, thus incurring \$1,000.00 in fines. Strata rules, when provided to a tenant, are considered terms of a tenancy agreement. In this case, the tenant breached the terms of the tenancy agreement by breaching the strata bylaws. Thus, it is my finding that the tenant owes \$1,000.00 in compensation to the landlords who are the individuals upon whom the fines are levied.

Section 31(3) of the Act states that a “tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.”

The tenant has, by all accounts, changed the lock to the rental unit without the landlords’ permission. It will cost the landlords to change the lock (once the tenant has vacated the rental unit). But for the tenant’s breach of section 31(3) of the Act the landlords would not be incurring this unnecessary expense. The amount claimed is reasonable in the circumstances and I have no hesitation in awarding this amount.

Last, section 72 of the Act permits an arbitrator to order payment of a fee by one party to a dispute resolution proceeding to another party. Generally, when an applicant is successful in their application, the respondent is ordered to pay an amount equivalent to the applicant’s filing fee.

In this dispute, the landlords have had to file two applications for dispute resolution. One in an attempt to have a non-rent paying tenant removed from the rental unit, and another in an attempt to recover unpaid rent.

Having granted the relief sought in both applications it is my finding that the landlords are entitled to recover the cost of both \$100.00 filing fees in the total amount of \$200.00

Summary of Award

In total, the landlords are awarded \$6,708.03 in compensation.

Pursuant to section 38(4)(b) of the Act the landlords are hereby authorized to retain the tenant’s \$725.00 security deposit in partial satisfaction of the above-noted award. The tenant is ordered, pursuant to section 67 of the Act, to pay to the landlords \$5,983.03.

The balance of the award (\$5,983.03) is granted by way of a monetary order. A copy of this monetary order is issued in conjunction with this decision, to the landlord.

The landlords must serve a copy of the monetary order on the tenant. Should the tenant not, or refuse to pay this amount, the landlords may enforce the monetary order in the Provincial Court of British Columbia.

Conclusion

IT IS HEREBY ORDERED THAT:

- 1. The tenant's application is DISMISSED, without leave to reapply.**
- 2. The landlords' applications are GRANTED.**
- 3. The landlords are granted an order of possession.**
- 4. The landlords are granted a monetary order.**
- 5. The tenancy is ended effective immediately.**

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

Dated: September 1, 2022

Residential Tenancy Branch