



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNRL, MNDL, MNDCL

Introduction

This matter was convened to address an Application for Dispute Resolution made on October 25, 2022, pursuant to the Residential Tenancy Act (the Act). The Landlord seeks the following relief:

- an order of possession
- a monetary order for unpaid rent and/or utilities;
- a monetary order for compensation for damage caused by the Tenant, their pet, or their guests; and
- a monetary order for compensation for monetary loss or other money owed.

The Landlord and the Tenant attended the hearing and provided affirmed testimony.

The Landlord testified that the Tenant was served with the Notice of Dispute Resolution Proceeding package in person on November 11, 2022. A copy of a signed Proof of Service document was submitted in support, and the Tenant acknowledged receipt during the hearing. I find these documents were served on and received by the Tenant on November 11, 2022.

The Tenant did not submit documentation in response to the Landlord's application.

The parties were given the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure permit an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue in the Landlord's application was whether or not the tenancy will continue. This relief is unrelated to the Landlord's request for monetary relief. Therefore, I find it appropriate to exercise my discretion to dismiss all but the Landlord's application for an order of possession. The balance of the Landlord's application is dismissed with leave to reapply.

Issue to be Decided

Is the Landlord entitled to an order of possession?

Background and Evidence

A copy of a signed tenancy agreement was submitted into evidence. It indicates that a tenancy began on May 26, 2022, although the Landlord testified the Tenant moved in on May 28, 2022. The tenancy agreement indicates that rent of \$1,300.00 per month is due on the first day of each month. The parties acknowledged the Tenant did not pay a security deposit. The parties also acknowledged that the Tenant lives in a separate unit at the rental property.

During the hearing, the Landlord raised an issue with respect to the tenancy agreement. On one hand, the Landlord submitted a copy of a signed tenancy agreement into evidence. In addition, the Landlord acknowledged receipt of payments from the Tenant as follows:

June 2022	\$1,300.00
July 2022	\$1,000.00
August 2022	\$350.00
September 2022	\$300.00
October 2022	\$300.00
November 2022	\$300.00
December 2022	\$300.00
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Total payments received:	\$3,850.00

However, the Landlord testified that although there had been discussions about entering into a tenancy agreement, the tenancy agreement was signed under duress. The Landlord testified that she is a senior citizen with health issues and, at the time the tenancy agreement was signed, she had recently experienced a death in the family. The Landlord testified she was frightened when she was presented with the tenancy agreement.

In reply, the Tenant denied she pressured the Landlord to sign the tenancy agreement and testified that the Landlord did not communicate her feeling about the tenancy agreement when it was signed.

In addition, the Tenant also testified that she agrees with the amount of the payments made as stated by the Landlord. However, the Tenant suggested she has been justified in withholding rent because the Landlord did not provide cable, internet, storage, laundry, and other services as agreed.

In any event, the Landlord testified that she issued a One Month Notice to End Tenancy for Cause dated June 18, 2022 (the One Month Notice). A Proof of Service Notice to End Tenancy document indicates the One Month Notice was served on the Tenant in person by SO on June 18, 2022. The document indicates that that service in this manner was witnessed by HE. A photograph depicting service of the One Month Notice on the Tenant was also submitted into evidence.

The Tenant was unsure of date the One Month Notice was received but acknowledged it could have been on June 18, 2022. The Tenant acknowledged that she did not dispute the One Month Notice.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

The Landlord asserted there was no tenancy agreement between the parties because it was signed under duress. The Tenant denied that she pressured the Landlord and was unaware of her feelings at the time. Based on the evidence before me, I find there is insufficient evidence to conclude that the tenancy agreement was signed under duress. Rather, I find it is more likely than not that the parties entered into a tenancy agreement

on the terms described above. Specifically, I find that the tenancy began on May 26, 2022, and that the Tenant moved into the rental unit on or about May 28, 2022. Although rent has not been paid in full, I also find that rent of \$1,300.00 per month is due on the first day of each month.

As I have found that a tenancy agreement exists between the parties, I will now proceed to deal with the One Month Notice. In this case, I find it is more likely than not that the One Month Notice was served on and received by the Tenant on June 18, 2022. Although the Landlord appears to have made notes in the margins of the One Month Notice submitted, I find that it is signed and dated, gives the address of the rental unit, states the effective date, states grounds for ending the tenancy, and is in the approved form. Therefore, I find the One Month Notice complies with the form and content requirements of section 52 of the Act.

Considering the above, and pursuant to section 47(4) of the Act, I find the Tenant had until June 28, 2022 to dispute the 10 Day Notice by filing an application for dispute resolution. The Tenant testified and I find that she did not.

As a result, pursuant to section 47(5) of the Act, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the One Month Notice and must vacate the rental unit.

I find the Landlord is entitled to an order of possession, which will be effective two days after it is served on the Tenant.

Conclusion

The Landlord is granted an order of possession which will be effective two days after it is served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: December 16, 2022

Residential Tenancy Branch