



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNRL, MNDCL, FFL
OPR, OPC, MNRL-S, MNDCL-S, FFL

Introduction

This hearing was scheduled to reconvene at 9:30 a.m. on December 7, 2022 having been adjourned at the tenant's request from November 24, 2022, concerning 2 applications made by the landlord which have been joined to be heard together. My Interim Decision was provided to the parties after the November 24, 2022 hearing which was accompanied by a notice of this hearing setting out the date, time and passcodes for the parties to use to access the conference call hearing.

The landlord has applied in the first application for the following relief with respect to the upper level of the rental home:

- an Order of Possession for unpaid rent or utilities;
- an Order of Possession for cause;
- a monetary order for unpaid rent or utilities;
- an order permitting the landlord to keep all or part of the pet damage deposit or security deposit;
- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; and
- to recover the filing fee from the tenant for the cost of the application.

The second application of the landlord seeks the following relief for the lower level of the rental home:

- an Order of Possession for unpaid rent or utilities;
- an Order of Possession for cause;
- a monetary order for unpaid rent or utilities;

- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; and
- to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing, accompanied by his daughter who acted as agent for the landlord and gave affirmed testimony. The landlord also called 1 witness who gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenant joined the call.

The landlord's witness testified that the tenant was served with the landlord's evidentiary material by posting the documents to the door of the rental unit on October 25, 2022. I accept that testimony, and I find that the tenant has received the evidence, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities were issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established that the two One Month Notices to End Tenancy for Cause were issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that the parties entered into a written tenancy agreement, a copy of which has been provided for this hearing, for the upper level of the rental home for rent in the amount of \$2,000.00 for a fixed term commencing December 31, 2021 and expiring on June 30, 2022. The tenant also wanted to rent the lower level and a verbal agreement was made for an additional \$700.00 per month commencing in January, 2022, and the tenant still occupies both units. At the outset of the tenancy the

landlord collected a security deposit for the upper level only in the amount of \$1,000.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The tenant failed to pay rent when it was due in August, 2022 and the landlord caused the tenant to be served with 4 notices to end the tenancy, copies of which have been provided for this hearing. The first is a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 2, 2022 with an effective date of vacancy of August 12, 2022 for unpaid rent in the amount of \$2,000.00 that was due on August 1, 2022, and specifies the upper unit.

The second notice is a One Month Notice to End Tenancy for Cause, specifying the upper unit, which is dated August 2, 2022 and contains an effective date of vacancy of September 30, 2022. The reason for issuing it states: Tenant is repeatedly late paying rent (Mar, Jun, July and August).

The third notice is a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities specifying the lower unit dated August 2, 2022 with an effective date of vacancy of August 12, 2022 for unpaid rent in the amount of \$700.00 that was due on August 1, 2022.

The fourth notice is a One Month Notice to End Tenancy for Cause, specifying the lower unit, dated August 2, 2022 with an effective date of vacancy of September 30, 2022. The reason for issuing it states: Tenant is repeatedly late paying rent (Mar, Jun, July and August).

No payments have been made towards rent for either of the rental units since the Notices were served and the tenant is currently in arrears of rent the sum of \$13,500.00. A statement of account and receipts for rent have also been provided for this hearing.

The tenant has not served the landlord with an Application for Dispute Resolution disputing any of the Notices.

The landlord's witness testified that all 4 notices to end the tenancy were served by posting them to the door of the rental home on August 2, 2022, and a photograph of the door with the documents attached has also been provided for this hearing.

Analysis

The *Residential Tenancy Act* specifies that a tenant has 5 days from the date of service to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, or to pay the

rent in full. If the rent is paid in full within that 5 day period, the Notice is of no effect. If the tenant fails to pay the rent in full or dispute the Notice within that 5 day period, the tenant is conclusively presumed to have accepted the end of the tenancy.

The landlord's witness testified that the two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities were posted to the door of the rental unit on August 2, 2022, which are deemed to have been served 3 days later, or August 5, 2022.

The law also specifies that a tenant has 10 days to dispute a One Month Notice to End Tenancy for Cause from the date of service. If the tenant fails to do so, the tenant is conclusively presumed to have accepted the end of the tenancy. The landlord's witness testified that the two Notices were served by posting them to the door of the rental unit on August 2, 2022, also deemed to have been served 3 days later, or August 5, 2022.

I have reviewed all 4 of the Notices, and I find that all are in the approved form and contain information required by the *Act*. The landlord's agent testified that the rent has not been paid and the tenant has not served the landlord with any documentation disputing the 10 Day Notices or the One Month Notices, and I have no such application before me. Since the tenant has not disputed any of the Notices, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession. Since the effective date of vacancy contained in all of the Notices has passed, I grant the Order of Possession effective on 2 days notice to the tenant. The tenant must be served with the Orders of Possession, which may be filed for enforcement in the Supreme Court of British Columbia.

I am also satisfied in the evidence and testimony that the tenant is in arrears of rent for the months of August through December, 2022 for a total of \$13,500.00.

Since the landlord has been successful with the applications, the landlord is also entitled to recovery of the filing fees of \$100.00 for each of the 2 applications.

The landlord has not led any evidence with respect to the monetary claim for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and I dismiss those applications.

I order the landlord to keep the \$1,000.00 security deposit in partial satisfaction of the monetary claim, and I grant a monetary order in favour of the landlord for the difference of \$12,700.00 ($5 \times \$2,700.00 = \$13,500.00 + \$200.00 \text{ filing fees} = \$13,700.00 - \$1,000.00 \text{ security deposit} = \$12,700.00$). The tenant must be served with the order,

which may be filed in the Provincial Court of British Columbia, Small Claims division for enforcement.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord for the upper level of the rental home effective on 2 days notice to the tenant.

I further grant an Order of Possession in favour of the landlord for the lower level of the rental home effective on 2 days notice to the tenant.

I order that the landlord may keep the \$1,000.00 security deposit in partial satisfaction of the landlord's claim, and I 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 \$12,700.00.

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: December 07, 2022

Residential Tenancy Branch