



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPC, OPN, LRSD, MNDCL-S, FFL

Introduction

This hearing dealt with an application by the Landlord pursuant to the Residential Tenancy Act (the “Act”) for the following orders:

1. an Order of Possession based on the One Month Notice, pursuant to section 47;
2. an Order of Possession based on the One Month Notice, pursuant to section 45;
3. a Monetary Order for damages to the unit, pursuant to section 67;
4. authorization to retain all or a portion of the tenant’s security deposit pursuant to section 38; and
5. authorization to recover the filing fee for this application, pursuant to section 72.

JK (the “Landlord”) appeared at the hearing.

The Landlord was given full opportunity under oath to be heard, to present evidence and to make submissions. The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11.

The tenant did not appear at the hearing. The hearing proceeded in the tenant’s absence pursuant to Rule of Procedure 7.3.

Preliminary

The Landlord testified the Notice of Dispute Resolution Proceeding and evidence was served on the tenant by posting it to the door of the rental unit on November 11, 2022.

Section 89(2)(d) of the Act allows a landlord to serve an application in relation to an order of possession (section 55 of the Act) on a tenant by attaching a copy to a door or other conspicuous place at the address at which the tenant resides.

Pursuant to section 90 of the Act a document served in accordance with section 89(2) of the Act is deemed to be received if given or served by attaching to a door, on the third day after it is attached. In this case, based on the undisputed affirmed testimony of the Landlord, I find that the tenant is deemed to have received the Landlord's application regarding an order of possession on November 14, 2022, in accordance with section 90(c) of the Act.

However, the Landlord also applied for monetary orders. Unlike applications in relation to orders of possession, an application for a monetary order must be served in accordance with section 89(1) of the Act. Section 89(1) of the Act allows for service by the following methods:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*;
- (f) by any other means of service provided for in the regulations.

As the Landlord did not serve the tenant with the Notice of Dispute Resolution Proceeding using any one of the methods approved under section 89(1) of the Act, I find the applications in relation to the monetary orders sought by the Landlord were not served on the tenant accordance with the Act. As a result, I order that the Landlord's applications for monetary orders are dismissed with leave to reapply.

The Landlord applied for an order to retain the tenant's security deposit in partial satisfaction of the costs of repairs required due to damage to the unit. I have considered the Landlord's testimony; however, at the time of this hearing, the tenant continues to reside in the unit. On that basis, I find the Landlord's application to keep the security deposit is premature. I dismiss this application with leave to reapply at the relevant time.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to recovery of the filing fee for this application?

Background and Evidence

While I have considered the documentary evidence and the testimony of the Landlord, not all of the details of their submissions and arguments are reproduced here. The relevant and important aspects of the Landlord's submissions and my findings are set out below.

The Landlord provided affirmed testimony that the tenancy commenced on August 1, 2020. Monthly rent is \$1,300.00 due on the first day of the month. The Landlord testified that they collected a security deposit in the amount of \$650.00 which they continue to hold in trust.

The Landlord testified that they served the One Month Notice September 1, 2022, because the tenant caused damage to the tub. The tenant did not notify the Landlord of the damage but instead, repaired the tub with duct tape and continued to use it. The continued use of the damaged tub resulted in further damage to the carpet, drywall and baseboards of the unit and a mold smell within the unit. Included in the Landlord's evidence are photographs of the damaged bathtub and damage to the carpets, drywall, and baseboards.

The Landlord testified that they took immediate action upon learning of the damage and made repairs as soon as possible. The Landlord testified that they were required to purchase a new bathtub and other materials and pay for repairs.

The Landlord further testified that the tenants brought bed bugs into the property and the Landlord was required to pay to have the unit sprayed.

Analysis

I accept the undisputed testimony of the Landlord that they served the One Month Notice on the Tenant on September 1st, 2022, by attaching it to the door of the rental unit.

Pursuant to section 90 of the Act a document served in accordance with section 88 of the Act is deemed to be received if given or served by attaching to a door, on the third day after it is attached. In this case, the tenant is deemed to have received the One Month Notice on September 4, 2022, in accordance with section 90(c) of the Act.

Pursuant to Rule of Procedure 6.6, the Landlord has the onus of proof to establish, on a balance of probabilities, that the notice issued to end tenancy is valid. This means that the Landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct and sufficient cause to end the tenancy.

The Landlord provided affirmed testimony that the tenant caused damage to the bathtub in the unit which they attempted to repair with duct tape and continued to use. This resulted in damage to the carpet, drywall, and baseboards of the unit and a mold smell in the unit. I accept the undisputed affirmed testimony of the Landlord on these points.

Section 47(d)(iii) of the Act states that the Landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has put the Landlord's property at significant risk. I find the Landlord has provided sufficient evidence to support on a balance of probabilities that the actions of the tenant failing to notify the Landlord of the damage to the bathtub, attempting to repair the damage with duct tape, and continuing to use the damaged bathtub put the Landlord's property at significant risk. This is evident by the damage caused to the carpet, drywall, baseboards, and ensuing mold smell in the unit.

The One Month Notice is included in the evidence. I find the One Month Notice meets the form and content requirements of section 52 of the Act. Considering the above, I find that the Landlord is entitled to an Order of Possession pursuant to section 55(1)(b) of the Act, which will be effective upon two days after service on the tenant.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was partially successful in this application, I order that the Landlord retain \$100.00 from the tenant's security deposit in satisfaction of the application fee.

Conclusion

The Landlord is granted an Order of Possession which will be effective two days after service on the tenant.

The Order of Possession must be 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: March 10, 2023

Residential Tenancy Branch