



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC/OPB, MNDC, FF

Introduction

This hearing concerns the landlord's application for an order of possession / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on May 19, 2012. Monthly rent of \$1,100.00 is due and payable in advance on the first day of each month, and a security deposit of \$550.00 was collected. A move-in condition inspection report was completed with the participation of both parties.

The landlord issued a 1 month notice to end tenancy for cause dated June 13, 2012. The notice was served by way of deposit into the tenant's mailbox, and it was opened by the tenant in the presence of both parties on June 14, 2012. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is July 31, 2012. The reasons shown on the notice for its issuance are as follows:

Tenant is repeatedly late paying rent

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

Subsequently, as a result of rent which remained unpaid on June 1, 2012 in the amount of \$550.00, the landlord issued a 10 day notice to end tenancy for unpaid rent dated June 14, 2012. Similar to the 1 month notice, as above, the 10 day notice was served by way of deposit into the tenant's mailbox, and it was opened by the tenant in the presence of both parties on June 14, 2012. A copy of the notice was submitted in evidence. Thereafter, the tenant made full payment of June's rent.

Presently, the tenant continues to reside in the unit, and he has not filed an application to dispute either of the above notices to end tenancy.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 47 of the Act addresses **Landlord's notice: cause**, and provides in part as follows:

47(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Based on the documentary evidence and testimony, I find that the tenant was served with a 1 month notice to end tenancy for cause dated June 13, 2012, which he received on June 14, 2012. The tenant did not file an application to dispute the notice within the 10 day period available for doing same after receiving the notice. The tenant is therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. Accordingly, I find that the landlord has established entitlement to an order of possession.

As for compensation, I find that the landlord has established entitlement to **\$69.00**, which arises directly out of the landlord's dealings with the tenant and is comprised as follows:

\$7.00: NSF fee assessed by Bank
\$7.00: NSF fee assessed by Bank
\$5.00: overdraft fee assessed by Bank
\$50.00: filing fee

I hereby order that the landlord may withhold the amount of \$69.00 from the tenant's security deposit of \$550.00.

As to the disposition of the balance of the security deposit of \$481.00 (\$550.00 - \$69.00), in anticipation of the end of tenancy the attention of the parties is drawn to section 38 of the Act which addresses **Return of security deposit and pet damage deposit**.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **1:00 p.m., Tuesday, July 31, 2012**. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I hereby order that the landlord may withhold **\$69.00** from the tenant's security deposit.

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: July 26, 2012.

Residential Tenancy Branch