



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPL MNDC CNL FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for landlord’s use of property pursuant to section 55;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord’s 2 Month Notice to End Tenancy for Landlord’s Use of Property (the 2 Month Notice) pursuant to section 49;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. There were no issues raised with respect to the service of the respected applications, including the landlord’s amended applications and evidence on file.

Issues

Is the landlord entitled to an order of possession or should the 2 Month Notice be cancelled?

Is the landlord entitled to monetary compensation?

Is the landlord entitled to recover its filing fee?

Background and Evidence

The tenancy began on February 1, 2017 with a monthly rent of \$750.00 payable on the 1st day of each month. The tenant paid a security deposit of \$375.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that on May 30, 2017 the tenant was personally served with the 2 Month Notice. The effective date of the 2 Month Notice was July 31, 2017. The 2 Month Notice was issued as her daughter intended to occupy the rental unit. Towards the end of July 2017, the tenant advised the landlord that she had secured new accommodation but required a two week extension to which the landlord agreed so long as the tenant pays rent for the extra two weeks. ON August 2, 2017, the tenant directly deposited the full month's rent to the landlord's account. The landlord did not realize the full month's rent had been paid as she was away and did not have access to any banking information. On August 17, 2017 the landlord returned to find the tenant was still occupying the rental unit. The landlord immediately filed for dispute resolution.

The landlord's monetary claim is for use & occupancy rent in the amount of \$2250.00 for the months of September, October and November 2017. The landlord testified the tenant has not paid anything for these months. The tenant also received a free month of rent in July 2017 pursuant to the 2 Month Notice.

The tenant acknowledged receipt of the 2 Month Notice. The tenant testified that towards the end of July 2017 she advised the landlord she was having a hard time finding alternative accommodations. The tenant testified that the landlord suggested she may look into alternative accommodation for her daughter. She paid the full month's rent on August 2, 2017 through direct deposit and never heard back from the landlord until August 17, 2017. The landlord did not issue any receipt for use & occupancy only until August 19, 2017. The tenant argues the landlord re-instated the tenancy and should be required to issue a new Notice to End Tenancy.

The tenant did not dispute the landlord's monetary claim and acknowledged nothing has been paid since August, 2017. The tenant also acknowledged that she still received the 1 month free rent in July 2017.

The landlord replied that she gave no indication to the tenant that she was re-instating the tenancy or accepting rent. The landlord also disputed advising the tenant that she would look at alternative accommodation for her daughter.

Analysis

I am satisfied that the tenant was personally served with the 2 Month Notice on May 30, 2017 pursuant to section 88 of the Act. I find the 2 Month Notice complies with the form and content requirements of section 52 of the Act.

Pursuant to section 49 of the Act, the tenant may make a dispute application within fifteen days of receiving the 2 Month Notice. If, as in the present case, the tenant does not make an application for dispute within fifteen days, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, July 31, 2017.

I dismiss the tenant's argument that the landlord re-instated the tenancy by accepting a rent payment in August 2017. On a balance of probabilities, I prefer the landlord's testimony over that of the tenant's and find the landlord only agreed to provide the tenant with an extra two weeks to vacate the rental unit. As the rent was paid by direct deposit, the landlord did not have an opportunity to immediately issue a receipt for use and occupancy. The landlord did issue such a receipt on August 19, 2017 and immediately filed for dispute resolution which supports the landlord's testimony that she had no intention to re-instate the tenancy. Further, I find it curious that the tenant still enjoyed the benefit of the 1 free month in July 2017 even though it was her belief that the landlord re-instated the tenancy. If this were the case, you would expect the tenant would have paid July and August 2017 rent to the landlord.

I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

I also accept the landlord's monetary claim for loss of use and occupancy rent in the amount of \$2250.00 which was not disputed by the tenant.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$2350.00

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the Act, I grant the landlord a Monetary Order in the amount of \$2350.00. Should the tenant fail to comply with this Order, this Order may be filed in

the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: November 17, 2017

Residential Tenancy Branch