



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPC, MNDL-S, FFL**

Introduction

The hearing was convened as a result of the Landlord's application under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession pursuant to section 47 pursuant to a 1 Month Notice for Caused date September 23, 2021("1 Month Notice");
- a monetary order for money owed or compensation for damage or loss that the Tenants, their pet(s) or their guest(s) caused during the tenancy pursuant to section 38 and 67;
- authorization to retain the Tenants' security and/or pet damage deposit(s) in partial satisfaction of the monetary order requested pursuant to section 38; and
- an order authorizing the Landlord the recovery of the filing fee of its application from the Tenant pursuant to section 72.

The Tenants did not attend this hearing scheduled for 11:00 am. I left the teleconference hearing connection open for the entire hearing, which ended at 11:54 am, in order to enable the Tenants to call into this teleconference hearing. The Landlord was represented at the hearing by its resident caretaker and manager ("CH") and its regional manager ("MM") and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that CH, MM and I were the only ones who had called into this teleconference. A witness ("AA") was called by the Landlord during the hearing when required to provide affirmed testimony.

CH testified the Notice of Dispute Resolution Proceeding and the Landlord's evidence ("NDRP Package") were separately served on the Tenants by registered mail on November 5, 2021. CH submitted a mail receipt and separate registered mail stubs

which provided the tracking numbers of the NDRP Packages for each of the Tenants to corroborate her testimony regarding service. I find that the NDRP Packages were served on each of the Tenants in accordance with sections 88 and 89 the Act. Pursuant to section 90 of the Act, I find the Tenants were deemed to have received their respective NDRP Packages on November 10, 2021.

Issues to be Decided

Is the Landlord entitled to:

- an Order of Possession?
- a monetary order to recover damages to make repairs that the Tenants, their pet(s) or their guest(s) caused during the tenancy?
- retain the security deposit?
- recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Landlord's application and my findings are set out below.

MM submitted a copy of the tenancy agreement between the Landlord and Tenants, MM testified the tenancy commenced on April 15, 2018 on a month-to-month basis with rent of \$1,000.00. Pursuant to a Notice of Rent increase, the rent increased to \$1,050.00 effective on December 1, 2019. The Tenants paid a security deposit of \$500.00.

MM testified that the Landlord purchased the rental unit in October 2020 and submitted a copy of the State of Title Certificate for the residential premises and an agreement dated October 22, 2020 whereby the Landlord was appointed agent of the owner of the residential premises. MM stated that the tenancy agreement with the Tenants provided by the former owner did not disclose the day of the month by which the Tenants are required to pay the rent. However, MM stated that by "convention", the Tenants pay the rent on the 1st of each month.

MM testified the Tenants paid the security deposit of \$500.00 to the original owner and the original owner advanced that security deposit to the current Landlord. MM stated Landlord is holding the deposit in trust for the Tenants. MM stated that the Tenant are up to date paying the rent to December 31, 2021. MM and FL confirmed the Tenants are still occupying the rental unit.

CH testified that the Landlord served the 1 Month Notice on the Tenants' door on September 23, 2021. CH submitted a signed Proof of Service on Form RTB-34 to corroborate her testimony regarding service of the 1 Month Notice on the Tenants. I find the 1 Month Notice was served on the Tenants pursuant to section 88 of the Act. I find, pursuant to section 90 of the Act, that the Tenants were deemed to have received the 1 Month Notice on September 26, 2021.

CH and MM stated they were not aware of the Tenants making any application for dispute resolution to dispute the 1 Month Notice. MM stated that, if the Landlord is successful obtaining an Order of Possession in this application, the Landlord would be agreeable to a date of possession for January 15, 2022.

The 1 Month Notice specified the following four causes for ending the tenancy:

1. Tenant or a person permitted on the property by the tenant:
 - a. has significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - b. has engaged in illegal activity that has, or is likely to damage the landlord's property;
 - c. has engaged in illegal activity that has, or is likely to adversely effect the quiet enjoyment, security, safety or physical well-being of another occupant of the landlord; and
2. Breach of a material term of the tenancy agreement that was not corrected within a reasonable period of time after written notice to do so.

The details of the causes set out in the 1 Month Notice provided by the Landlord are as follows:

One Month Eviction Notice due to the tenant or the tenants' guests disturbing other tenants repeatedly after being asked to stop, as well as damaging property of the Landlords.

CH testified that the Landlord has received numerous complaints from other occupants of the residential premises regarding continuing disturbances caused by the Tenants and the numerous guests they have entering and exiting the residential premises and the Tenants' rental unit. CH submitted the following emails and letters of complaints from other occupants of the residential premises that are summarized below:

Date	Complainant:	Nature of Complaint
July 5, 2021	Occupant of Residential Premises	"Please can something be done about [Tenants' rental unit], [Tenants'] customers are always yelling outside the front door looking for [Tenant] to come down and open the door, they are yanking and pounding on the door. ...This is at 1:30 in the morning and it wakes us up. ..."
August 16, 2021	AA - Occupant of Residential Premises	"Since I have moved into the [Tenants' rental unit], I have had consistent increase in the amount of drug user knocking on my door at all hours of the day looking to buy drugs from [Tenant]. It they aren't able to get/break into the building they will stand outside the back screaming at the top of their lungs for their dealers to come out. I have had multiple incidents where I have been going to my unit and have felt like I as in harms way due to the drug dealers' customers. After getting their drugs the users will either use in the hallway or on the property resulting in them passing our or causing a mess/disturbance..."
August 29, 2021	AA – Occupant of Residential Premises	"I have gotten confirmation from the people breaking in the front door that [Tenant] told them to rip

		the door open and come up when they arrive. I am very tired of having these people in the building causing issues.”
September 9, 2021	Occupant of residential premises	“Since we moved in last [date], [rental unit number] has been selling drugs out of his apartments and brining homeless junkies into the building and not make it a safe place he will either tell them to reef the door open or he will sometimes throw his keys down for them to get in. He has also threatened me and my husband because we kept telling the junkies to clear off saying wait and see what happens to us, etc.”
September 21, 2021	AA – Occupant of residential premises	“I have someone come knocking on my door at about 2 am looking for the drug dealer in [rental unit]. They were yelling outside for 40 minutes prior to getting in the building. This has happened multiple times in the last few months. I fear for my safety every hour of the day...”

CH testified the Landlord served a warning letter to the Tenants dated August 18, 2021, a copy of which was submitted into evidence. In that letter, CH stated “I have been receiving complaints of your guest yelling for you to come outside or for you to open the door for them ... These disturbances MUST STOP immediately. Once your guest are finished visiting with you they are to leave the building and property, they are NOT to having around the halls, stairwells or on the Property... This is your first warning letter. If a third warning letter is issued, it will be accompanied by an eviction notice.”

CH testified the Landlord served a second warning letter on the Tenants dated August 30, 2021, a copy of which was submitted into evidence. In that letter, CH stated "It has been brought to my attention that you have been telling your guests to pull forcefully on the front door to the building in order to gain access. This has caused damage to the front door of [address of residential premises]. We are scheduling a repair to the door, however, should you or your guests to continue to forcefully open the front door, then you may be charged for further repairs."

On September 10, 2021, MM sent a breach letter to the Tenants, a copy of which was submitted into evidence, in which he refers to the previous three notices regarding complaints received from other occupants of the residential premises relating to excess noise in the Tenants' rental unit, the common areas and around the property, In addition, to the numerous complaints noted in the September 10, 2021 letter, MM reported that the property manager has been fined two times by the City of Kamloops for nuisance calls originating from the rental unit. MM states in this letter "Your conduct in the apartment complex must stop as it is affecting the operations and management of the property as well as the quiet enjoyment of the tenants in the complex. We expect your full cooperation in the above listed matters and should the issues continue we will be forced to file for an Order of Possession to end your tenancy..."

On September 23, 2021, MM sent another breach letter to the Tenants regarding damages to the front door, together with an invoice for repairs performed to the front door and lock to the residential premises resulting from the Tenant's guests using excess force to open it without a key. A request for payment of the \$505.65 was enclosed. The letter states "Failure to pay for the damages caused by your guests may result in an Order of Possession which would end your tenancy." A copy of the September 23, 2021 letter and invoice and invoice for repairs were submitted into evidence by MM.

MM called AA who attended the hearing to provide affirmed evidence for the Landlord. AA reported that on or about September 14, 2021 she was approaching the entry door to the residential premise and observed two people attempting to gain entry to the building. AA stated that she witnessed those persons damage the door to gain entry into the building. She stated that she asked them why they would damage the door and they informed her that one of the Tenants told them to force the door open to get into the building. AA stated that she then observed the two persons go to and enter the Tenants' rental unit. MM and CH also reported that one occupants of the residential premises had vacated their rental unit because of the continuing disturbances and the messes left in the hallways by guests of the Tenants.

MM testified that the Landlord paid \$405.65 to repair the damages to the entrance door caused by the Tenant's guests. To corroborate his testimony, MM submitted a Monetary Order Worksheet on Form RTB-37 together with a copy of the invoice together with a copy of the invoice from the contractor who performed the repairs to the lock and door which detailed the labour and hardware charges for the repairs. MM also submitted pictures of the damaged door and locking mechanism. As noted above, CH submitted a copy of a beach letter dated September 10, 2021 served on the Tenants that provided a copy of the Invoice for the repairs and requested the Tenants reimburse the Landlord \$405.54 for the damages caused by the actions of the Tenants' guests.

Analysis

Rules 2.5 and 6.6 of the *Residential Tenancy Branch Rules of Procedure* apply to this hearing and they provide:

1.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].

When submitting applications using the Online Application for Dispute Resolution, the applicant must upload the required documents with the application or submit them to the Residential Tenancy Branch directly or through a Service BC Office within three days of submitting the Online Application for Dispute Resolution.

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

A. Order of Possession for Landlord:

I accept the undisputed affirmed testimony of CH and MM and find the 1 Month Notice was properly served by posting it on the Tenant's door on September 23, 2021. Pursuant to section 90 of the Act, I find that Tenants were deemed to have been served with the 1 Month Notice on September 26, 2021. Pursuant to section 47(4) of the Act, the Tenant had 10 days, being November 8, 2021, to make an application for dispute resolution to dispute the 1 Month Notice.

Sections 47(4) and 47(5) provide:

- 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.

[emphasis added in italics]

There is no evidence before me that the Tenant made an application to dispute the 1 Month Notice. As a result, section 47(5) provides the Tenant is conclusively presumed to have accepted that the tenancy ended on October 31, 2021. As of the date of this hearing, the Tenant has not vacated the rental unit. As a result, the Tenant is overholding the rental unit.

Sections 55(2), 55(3) and 55(4) of the Act state:

- 55(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:
- (a) a notice to end the tenancy has been given by the tenant;
 - (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;
 - (c) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
 - (c.1) the tenancy agreement is a sublease agreement;
 - (d) the landlord and tenant have agreed in writing that the tenancy is ended.
- (3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.
- (4) *In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [Resolving Disputes],*
- (a) *grant an order of possession, and*
 - (b) *if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.*

[emphasis added in italics]

Based on the foregoing, I find the Landlord is entitled to an Order of Possession pursuant to section 55(4) (a) of the Act.

I have reviewed the 1 Month Notice and find that it complies with form and content requirements of section 52 of the Act. As such, I find the 1 Month Notice is valid.

As the Tenants have not disputed the 1 Month Notice, I have found that that the Tenants are *conclusively presumed* to have accepted that the tenancy ends on the effective date of the notice. Nevertheless, as neither of the Tenants appeared at the hearing, I will address the causes claimed by the Landlord for ending the tenancy.

Subsections 47(1)(d) of the Act state:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

[...]

- (d) the tenant or a person permitted on the residential property by the tenant has
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) put the landlord's property at significant risk;

I accept the undisputed testimony of CH, MM and AA that the Tenants, or a person permitted on the residential property by the Tenants:

1. have significantly interfered with or unreasonably disturbed other occupants in the residential premises contrary to section 47(1)(d)(i) of the Act;
2. seriously jeopardized the health or safety or a lawful right or interest of the Landlord or other occupants in contravention of section 47(1)(d)(iii); and
3. have put the Landlord's property at risk in violation of section 47(1)(d)(iv).

Based on the above, in addition to the application of conclusive presumption under section 47(5)(a) of the Act for ending the tenancy, I find the Landlord has established cause for ending the tenancy pursuant to subsections 47(1)(d)(i), 47(1)(d)(iii) and 47(1)(d)(iv) of the Act.

Monetary Claim for Damages Caused to Landlord's Property

Sections 7, 67 and 72 of the Act states:

- 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.
- 67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.
- 72(1) The director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.
- (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted
 - (a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and
 - (b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Residential Tenancy Branch Policy Guideline 16 addresses the criteria for awarding compensation and the limitation periods for filing claims. Part C. of that Guideline 16 provides:

C. COMPENSATION

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement; RESIDENTIAL TENANCY POLICY GUIDELINE 16 Compensation for Damage or Loss Page 16-2 August 2016
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

Based on the undisputed testimony of CH, MM and AA, I find that the Landlord has established:

- the Tenants have failed to comply with section 32(3) of the Act;
- loss or damage has resulted from this non-compliance by the Tenants or persons permitted on the residential premises by the Tenants;
- the Landlord has suffered the damage or loss have proven the amount of or value of the damage or loss; and
- the Landlord who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to section 67 of the Act, I find that the Tenants are responsible for the damages caused by their guests or guests to the door locks to the entrance to the residence premises. The Landlord has submitted a Monetary Order Worksheet to support the Landlord's claims for damages and I find the repairs cost \$505.65. I find the damages to the lock and door caused by the Tenants' guests were wilful, at the direction of the Tenants and impacted the safety and security of other occupants of the

residential premises. As result the Landlord was required to make timely repairs to the door to ensure the continuing security of other occupants and reduce the potential for additional damages to the residential premises.

Residential Tenancy Branch Policy Guideline 40 provides a guide for determining the useful life of building elements for considering applications for additional rent increases and determining damages which the director has the authority to determine under the Act and the *Manufactured Home Park Tenancy Act*. Under the heading this Guideline states:

Damage(s)

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator *may* consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator *may* consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

[emphasis in italics added]

Based on the above, I have determined that it would be inappropriate in these circumstances to apply any reduction for depreciation to the costs of repairing the door and lock mechanism. Based on the foregoing, I find the Landlord has established its monetary claim of \$405.65 for damages against the Tenants. Pursuant to section 67 of the Act, I award the Landlord with \$405.65 from the Tenant. Pursuant to section 72(2)(b), the Landlord may deduct the \$405.65 from the Tenants' security deposit in full satisfaction of the monetary claim.

As the Landlord has been successful in this application, pursuant to section 72(1) of the Act, I order the Tenants reimburse the Landlord for the \$100.00 filing fee of this application. Pursuant to section 72(1)(b), the Landlord may apply the balance of the security deposit of \$94.35 towards payment of the filing fee and I grant the Landlord a Monetary Order in the amount of \$5.65 for the balance of the filing fee.

Conclusion

Pursuant to section 67 of the Act, the Landlord is authorized to retain \$405.65 from the Tenant's \$500.00 security deposit in satisfaction of the Landlord's monetary claim. The Landlord is awarded \$100.00 to reimburse it for the filing fee of the application and is authorized to deduct \$94.35 from the Tenant's security deposit. The Landlord is granted a Monetary Order in the amount of \$5.65 calculated as follows:

Description	Amount
Damages	\$405.65
Landlord's Filing Fee of Application	\$100.00
Security Deposit Credit	-\$500.00
Total	\$5.65

The Landlord is provided with an Order of Possession effective January 15, 2022, after service of this Order on the Tenants. Should the Tenants or anyone on the premises fail to comply with this Order, this Order may be filed 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: January 11, 2022

Residential Tenancy Branch