



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPC, OPM, MNRL-S, MNDL-S

Introduction

The Landlord applied for dispute resolution (“Application”) and seeks the following:

- an Order of Possession on an undisputed One Month Notice to End Tenancy for Cause (the “Notice”) under section 55(2)(b) of the *Residential Tenancy Act* (the “Act”);
- an Order of Possession on the basis of a signed mutual agreement to end tenancy (“Mutual Agreement”) under sections 44(1)(c) and 55(2)(d) of the Act;
- a Monetary Order for unpaid rent under sections 26 and 67 of the Act; and
- a Monetary Order for damage caused by the Tenant during the tenancy under section 67 of the Act.

The Landlord was represented at the hearing by an Agent, A.K. The Tenant attended the hearing with an observer, K.M. All parties who provided testimony affirmed to tell the truth during proceedings and were given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

A.K. testified that they served the Notice of Dispute Resolution Package (“Materials”) on the Tenant by attaching to the door of the rental unit on March 23, 2023. The Tenant confirmed receipt of the Materials on March 26, 2023 and stated they had sufficient time to review them. Given this, I find that the Landlord’s Materials were sufficiently served pursuant to section 72(2)(c) of the Act. The Tenant did not submit any documentary evidence.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The attending parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed that the tenancy started on September 1, 2022 and that rent is \$700.00 per month due on the first day of the month. A security deposit of \$350.00 was paid by the Tenant which the Landlord still holds. A written tenancy agreement was signed but a copy was not entered into evidence by either party.

A.K. stated they seek an Order of Possession because, though the Tenant appears to no longer reside at the rental unit, the Tenant has attempted to re-enter the unit and move back in and that some of their belongings are still there. The Tenant stated the door was boarded up and they can no longer access the unit.

Order of Possession

A.K. testified that they served the Notice due to an incident in November or December 2022 where the Tenant threatened a tenant in another unit, and the caretaker they employ, G.C., with a machete. During the Incident the Tenant broke a windowpane with the machete. I was referred to video footage of the incident that was entered into evidence by the Landlord. The video shows the Tenant striking the windowpane of a door with a machete.

A.K. stated the Tenant also allowed strangers into the rental unit, caused damage to the rental unit, had not paid rent and frequently disturbed other residents.

The Notice was served by attaching to the door of the rental unit on February 27, 2023. A witness was present when the Notice was served but they could not attend the hearing. A copy of the Notice was entered into evidence by the Landlord. The Notice is signed February 27, 2023 and provides an effective date of April 3, 2023.

A.K. testified that on February 27, 2023 the Tenant signed the Mutual Agreement and vacated the rental unit. After the Tenant vacated the rental unit, the locks were changed and, as there was damage to the door of the rental unit, it was boarded up.

A copy of the Mutual Agreement was entered into evidence by the Landlord. It is signed by the Tenant and the Landlord's Agent, G.C., and provides that the Tenant agrees to vacate the rental unit at 7:40 P.M. on February 27, 2023. The Mutual Agreement is a Mutual Agreement to End Tenancy (RTB-8) form provided by the Residential Tenancy Branch.

The Tenant stated that they thought that the Mutual Agreement was just to remove people he had allowed to enter the rental unit and did not apply to him.

The Tenant testified that they did not receive the Notice and that the incident with the machete started because he was being called names. The Notice was not disputed by the Tenant.

Monetary Order for Unpaid Rent

A.K. testified that they are seeking a Monetary Order for \$4,200.00 which represents unpaid rent from September 2022 to February 2023 inclusive. This is a period of six months in total.

The Tenant initially testified that they had withheld rent as there was no working fridge or stove in the rental unit.

The Landlord testified they were not aware of any issues with either the fridge or the stove as there had been no communication from the Tenant to let them know of any problems.

The Tenant then stated they had paid rent to the Landlord's Agent, G.C, though stopped paying rent in December 2022 when the issues with the fridge and stove started. They said they paid G.C. in cash but did not get a receipt.

A.K. testified that G.C. has clear instructions to issue a receipt whenever a tenant pays in cash and reiterated that they had not received any rent from the Tenant.

Monetary Order for Damage Caused by the Tenant

A.K. stated they seek a Monetary Order of \$1,000.00 to cover damage caused by the Tenant during the tenancy. This amount is made up of \$400.00 to replace the windowpane damaged by the Tenant and \$600.00 to repaint the rental unit as the Tenant had damaged the walls. I was referred to photographs of the inside of the rental unit submitted into evidence by the Landlord which show dart board style targets drawn on multiple walls and graffiti.

A.K. testified that the amount sought for the broken windowpane was based on the actual amount it cost in parts and labour to replace a similar pane on a previous occasion.

A.K. testified that they believe the rental unit was painted before the start of the tenancy and that they pay a fixed amount of \$600.00 to a painter to paint a unit for them.

The Tenant initially testified that when they moved into the rental unit, it was in the same condition it is currently in. They then later clarified that the graffiti and other damage to the walls was done by people they allowed into the rental unit when they were away and they had tried to paint it themselves.

The Tenant acknowledged they did break the windowpane during the incident with the machete.

Analysis

Order of Possession

Section 44(1)(c) of the Act states that one of the ways in which a tenancy can end is if the landlord and tenant agree in writing to end the tenancy. Section 55(2)(d) states that a landlord may apply for dispute resolution and request an Order of Possession if the landlord and tenant have agreed in writing that the tenancy is ended.

Based on the testimony from both parties, I find that the Landlord and the Tenant did agree in writing to end the tenancy, specifically in the form of the Mutual Agreement. Though the Tenant stated they believed the Mutual Agreement applied to other parties that they had allowed into the rental unit and not them, I find that the Mutual Agreement

makes it clear that the Tenant agreed to vacate the rental unit on February 27, 2023 at 7:40 P.M.

Based on the above findings, the Landlord is granted an Order of Possession under section 55(2)(d) of the Act. A copy of the Order of Possession is attached to this Decision. It is the Landlord's obligation to serve the Order of Possession on the Tenant. If the Tenant does not comply with the Order of Possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that court.

The Tenant has two days to vacate the rental unit from the date of service or deemed service. I find that the Tenancy ended on February 27, 2023 in accordance with the Mutual Agreement.

As an Order of Possession has been granted to the Landlord on the basis of the Mutual Agreement, I shall not be deciding on the merits of the Notice.

Request for Monetary Orders

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

As noted in Policy Guideline 16 - Compensation for Damage or Loss, in order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the Landlord to prove their entitlement to a claim for a monetary award.

Unpaid Rent

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent.

The Act sets out limited circumstances in which monies claimed by the tenant can be deducted from rent, which include when a tenant has paid a security or pet deposit above the allowed amount, reimbursement of costs incurred by the tenant for emergency repairs, when a landlord collects rent for a rent increase that does not comply with the *Residential Tenancy Regulation*, if the landlord gives authorization to not pay rent, or as ordered by the Director.

The Tenant put forward no evidence to indicate that any of the above circumstances are applicable, nor are any apparent to me. Therefore, I am satisfied that rent in the amount of \$700.00 was due to be paid by the Tenant on the first day of each month throughout the duration of the tenancy.

I find, on the balance of probabilities, that the Tenant did not pay rent due on September 1, 2022 though to February 1, 2023 inclusive. Though eventually the Tenant testified that they had in fact paid rent until December 1, 2022, their testimony overall was inconsistent and vague. Accordingly, I give greater weight to the Landlord's testimony and find that they are entitled to a Monetary Order for \$4,200.00 for unpaid rent under section 67 of the Act.

Damage Caused by the Tenant

Section 32(3) of the Act states that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant, or a person permitted on the property by the tenant.

Based on the Tenant's testimony, I find that they caused damage to the windowpane and that the damage to the walls of the rental unit was done by persons allowed into the rental unit by the Tenant.

I find that the Landlord's Agent's testimony regarding the basis for the monetary amounts claimed in respect of the windowpane and the damage to the walls of the rental unit to be entirely reasonable. Accordingly, I find that the Landlord is entitled to Monetary Order for \$1,000.00 for damage caused by the Tenant during the tenancy under section 67 of the Act.

Under section 38(4)(b) of the Act, the Landlord is ordered to retain the security deposit in partial satisfaction of the payment order.

Conclusion

The Landlord is issued an Order of Possession.

The Landlord is issued a Monetary Order for unpaid rent and damage caused by the Tenant during the tenancy.

The Monetary Order is attached to this Decision and must be served on the Tenant. It is the Landlord's obligation to serve the Monetary Order on the Tenant. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below:

Item	Amount
Unpaid rent	\$4,200.00
Damage caused by the Tenant	\$1,000.00
Less: security deposit	(\$350.00)
Total	\$4,850.00

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: April 18, 2023

Residential Tenancy Branch