



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPC MNDL FFL

Introduction

This disputed relates to a landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for the following:

1. Order of possession based on an undisputed 1 Month Notice to End Tenancy for Cause dated November 17, 2022 (1 Month Notice),
2. Undisclosed damages to the rental unit,
3. \$100 filing fee.

The landlord owner and agent (landlord) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding document dated December 19, 2022 (Notice of Hearing), application and documentary evidence (Hearing Package) were considered. The landlord testified that the Hearing Package was served on the tenant by registered mail to the tenant at the rental unit address on December 21, 2022. The Canada Post registered mail tracking number is RN 666 578 440 CA. According to the Canada Post registered mail tracking website, the tenant signed for and accepted the Hearing Package on December 23, 2022. I find the tenant was served as of December 23, 2022, which is the date the tenant signed for and accepted the Hearing Package.

Preliminary and Procedural Matters

Firstly, the landlord was advised that their application for damages was declined pursuant to section 59 of the Act due to insufficient details of any damages. The landlord has liberty to apply for damages under the Act. This decision does not extend any applicable timelines under the Act.

The landlord confirmed their email address during the hearing. They also confirmed that they are not aware of the tenant's email address. The landlord was advised that the decision and any related orders will be emailed to the landlord. The decision will be sent by regular mail to the tenant.

Issues to be Decided

- Is the landlord entitled to an order of possession based on an undisputed 1 Month Notice?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The landlord confirmed there is no signed tenancy agreement. The landlord confirmed that a verbal tenancy was formed which began in March 2018 and that current monthly rent is \$600 per month and due on the first day of each month.

The landlord confirmed service of the 1 Month Notice by posting to the tenant's door on November 17, 2022, which was witnessed by MD. The agent stated that the landlord has not been served with any application from the tenant disputing the 1 Month Notice. The 1 Month Notice alleges 2 causes as follows:

- ☐ Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
- ☐ significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - ☐ seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
 - ☒ put the landlord's property at significant risk
- ☒ Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

The Details of Cause(s) section reads as follows:

<small>Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.</small>
<small>Details of the Event(s):</small> LANDLORD'S AGENT WAS NOT ALLOWED ^{ACCESS} BY TENANT TO ENTER & INSPECT APARTMENT #207, DESPITE WRITTEN NOTICE ON 16 NOV/22. 1

The landlord confirmed that money for use and occupancy has been paid for April 2023. The landlord is seeking an order of possession as soon as possible and the filing fee.

The effective vacancy date listed on the 1 Month Notice was December 31, 2022, which has passed. The tenant continues to occupy the rental unit. The landlord claims the tenant has damaged the rental unit and has denied entry to inspect after written notice provided on November 16, 2022.

The tenant paid a security deposit of \$300 at the start of the tenancy, which the landlord continues to hold.

Analysis

Based on the undisputed documentary evidence before me and the undisputed testimony provided by the landlord during the hearing, and on the balance of probabilities, I find the following.

Order of possession – Section 47 of the Act states that if the tenant once served with the 1 Month Notice does not dispute the 1 Month Notice within 10 days of receiving the 1 Month Notice, the tenant is conclusively presumed to have accepted the 1 Month Notice and must vacate the rental unit on the effective vacancy. In the matter before me, the tenant did not dispute the 1 Month Notice and as a result, I find the tenancy ended on the effective vacancy date, which was December 31, 2022.

As the tenant continues to occupy the rental unit, I find the tenant is overholding the rental unit. Therefore, pursuant to section 55 of the Act, I grant the landlord an order of possession effective **April 30, 2023 at 1:00 p.m.** I have used this date as the agent stated the tenant has paid for use and occupancy for April 2023.

In addition, I have reviewed the 1 Month Notice and find that it complies with section 52 of the Act. I also accept the landlord's undisputed testimony that the tenant has damaged the rental unit and has denied entry into the rental unit to inspect after notice of entry was provided in writing on November 16, 2022.

As the landlord's application was successful and pursuant to section 72 of the Act, I grant the landlord **\$100** for the recovery of the cost of the filing fee under the Act. Given the above, I authorize the landlord pursuant to section 67 and 72 of the Act to retain \$100 from the tenant's security deposit of \$300 in full satisfaction of the recovery of the cost of the filing fee. I find that the tenant's new security deposit balance is \$200 effective immediately, pursuant to section 62(3) of the Act.

Conclusion

The landlord's application is fully successful. The tenancy ended on December 31, 2022. The tenant has been overholding the rental unit since that date. The landlord is granted an order of possession effective April 30, 2023 at 1:00 p.m.

This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has been authorized pursuant to section 67 and 72 of the Act, to retain \$100 from the tenant's security deposit of \$300, in full satisfaction of the recovery of the cost of the filing fee.

The tenant's new security deposit balance is \$200 effective immediately, pursuant to section 62(3) of the Act.

The decision and order will be emailed to the landlord.

The decision will be sent by regular mail to the tenant.

The landlord must serve the order of possession on the tenant.

The tenant is cautioned that they can be held liable for all costs related to enforcement of the order of possession including court costs and bailiff fees.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 24, 2023

Residential Tenancy Branch