



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BAYSIDE PROPERTY SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNDCL-S MNRL-S OPC

Introduction

This hearing dealt with the landlord's application pursuant to the Residential Tenancy Act (the "Act") for a monetary order for unpaid rent and liquidated damages, an order of possession and reimbursement of the filing fee.

Landlord's representatives, KO and AT appeared on behalf of the landlord. The tenant appeared on her own behalf. Both parties each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that they sent the tenant the notice of dispute resolution and their complete evidence package by registered mail on January 16, 2019. The landlord provided the registered mail tracking number. The tenant confirmed receipt of the notice of dispute resolution and the landlord's evidence. I find that the tenant was properly served in accordance with sections 88, 89 and 90 of the *Act*.

The landlord issued a One Month Notice to End Tenancy for Cause (the "One Month Notice") dated December 26, 2018. The landlord testified that they posted the one Month Notice on the tenant's door on December 26, 2018 and landlord submitted a witnessed proof of service of the One Month Notice. The tenant acknowledged receipt of the One Month Notice.

Issue(s) to be Decided

Is the landlord entitled to an order for possession pursuant to section 55 of the *Act*?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67 of the *Act*?

Is the landlord entitled to reimbursement of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The parties agreed that they had a fixed term tenancy agreement starting May 1, 2018 ending April 30, 2018. The tenant paid \$1,250.00 per month in rent, due on the first of each month and the tenant paid a \$625.00 security deposit. The landlord provided a copy of the tenancy agreement.

The landlord issued the One Month on December 26, 2018. The One Month Notice stated that the reason for the end of the tenancy was repeated late payment of rent. The One Month Notice stated a move out date of January 31, 2019.

The parties agreed that the tenant did not pay any rent in November 2018. The tenant testified that she paid the landlord \$700.00 rent in December 2018. However, the landlord testified that the tenant paid the landlord the \$700.00 in January 2019, not December 2018. Both parties agreed that the tenant paid the \$1,250.00 rent for February 2019. Accordingly, both parties agreed that the tenant paid the sum of \$700.00 in rent from November 2018 to January 2019, inclusive, and the total rent due during that time period was \$3,750.00. The landlord provided a copy of their rent ledger for the rental unit.

Tenant also testified that she paid the landlord \$200.00 at 8:30 a.m. on the morning of this hearing by dropping off a money order at the mail slot of the rental office at the apartment complex. The manager of the rental office, AT, did not know if the tenant had dropped of the money order as claimed because she had not yet gone to the property on the day of the hearing. Furthermore, AT stated that there were no employees at the rental office who could verify payment at the time of the hearing.

The tenant testified that she willing to make payments to catch up on the rent arrears. She testified that she fell behind in the rent because she was dealing with difficult personal and medical issues

The addendum to the tenancy agreement had a liquidated damages clause which stated:

The Tenant(s) agrees to an initial 12 month fixed term tenancy. If the Tenant(s) breaches a material term of this Agreement that causes the Landlord to end the tenancy before the end of the fixed term, or if the Tenant(s) provides the landlord with notice, whether written, oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating and does vacate before the end of the fixed term, the Tenant(s) will pay to the Landlord the sum of \$625 as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the Landlord from claiming future rental revenue loss that will remain unliquidated, as well as any other amounts by the Tenant(s), such as unpaid rent or fore damage to the rental unit or residential property.

Analysis – Notice to End Tenancy

The landlord is seeking an order of possession and a monetary order for unpaid rent and liquidated damages. I will address each claim separately.

Pursuant to section 47(4) of the *Act*, a tenant has ten days after receipt of a notice to end a tenancy for cause to dispute the notice. In this matter, the One Month Notice was served on the tenant by posting the notice on her door on December 26, 2018. Pursuant to section 90 of the *Act*, a notice posted on a door is deemed to have been served three days later, being December 29, 2018. Accordingly, the tenant had ten days after the effective date of service of December 29, 2018, to dispute the notice, being January 8, 2019. However, the tenant did not file her application for dispute resolution and the time for making such an application has expired.

Section 47(5) of the *Act* states that a tenant who does not timely file an application to dispute a notice to end tenancy for cause is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

Since the tenant did not timely file this application to dispute the landlord's One Month Notice, I find that the tenant is conclusively presumed to have accepted that this tenancy ended on the effective date of the notice, being January 31, 2019. Accordingly, I grant the landlord an order of possession pursuant to section 55(2)(b) of the *Act*.

Analysis – Unpaid Rent

Based on the agreed testimony of the both parties, I find that the tenant had an obligation to pay monthly rent in the amount of \$1,250.00 and the tenant did not pay any rent for November 2018 or January 2019. The parties disagree whether the \$700.00 was paid in December 2018 as claimed by the tenant or January 2019 as claimed by the landlord. I find that the \$700.00 was paid by the tenant in December 2018 since this date is corroborated by the landlord's rental ledger.

I am not satisfied that the tenant provided a payment of \$200.00 on the day of the hearing. The tenant did not provide corroboration for the payment and the landlord did not have an opportunity to verify the payment.

Accordingly, I find that the tenant has made the following rent payments since November 2018.

<u>Date</u>	<u>Amount Paid</u>	<u>Amount Owing</u>
November 2018	\$0.00	\$1,250.00
December 2018	\$700.00	\$550.00
January 2019	\$0.00	\$1,250.00

Total		\$3,050.00
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Pursuant to section 71(1) of the *Act* which states, “If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results.” I find the landlord is entitled to a monetary award of \$3,050.00 for unpaid rent since November 2018.

Analysis - Liquidated Damages

Residential Tenancy Policy Guideline #4 states the following about liquidated damages:

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.

In this matter, the tenancy agreement states that the tenant must pay liquidated damages if the she “breaches a material term” of the tenancy agreement. However, the landlord has not submitted any evidence that the late payment of rent by the tenant was a material breach of the tenancy. Pursuant to *Residential Tenancy Branch Rules of Procedure* section 6.6, the landlord has the onus of proof as the applicant. In the absence of evidence, I am not satisfied that the landlord has proved that the tenant has breached a material term of the tenancy agreement. Accordingly, I dismiss the landlord’s request for liquidated damages.

Based on the undisputed testimony of the landlord and the tenancy agreement, I find that the landlord holds a security deposit of \$625.00 which may be deducted from the damages owed by the tenants pursuant to section 72(2)(b) of the *Act*.

In addition, since the landlord has been successful in this matter, I award the landlord \$100.00 for recovery of the filing fee which may also be deducted from the security deposit pursuant to section 72(2)(b) of the *Act*.

Accordingly, I find that the landlord is entitled to a monetary award for **\$2,525.00**, calculated as follows.

<u>Item</u>	<u>Amount</u>
Unpaid rent	\$3,050.00
Filing fee	\$100.00
Less Security deposit	(\$-625.00)
Total	\$2,525.00

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I grant the landlord a monetary order in the amount of **\$2,525.00**. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court to be 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: February 27, 2019

Residential Tenancy Branch