



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HABITAT HOUSING
SOCIETY and [tenant name suppressed to protect
privacy]

Dispute Codes

FFL OPRM-DR

DECISION

Introduction

This hearing dealt with the landlord's application pursuant to the Residential Tenancy Act (the "Act") for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing. The landlord had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled hearing time for ten minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct participant code was provided to the landlord.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the "Ten-Day Notice") on February 6, 2019. The ten-Day Notice was posted on the tenant's door on February 6, 2019.

Preliminary Matter: Amendment of Application to Include Post-Filing Rent Arrears

In the hearing the landlord testified that the tenant continues to occupy the rental unit and the landlord has requested an amendment to the Application for Dispute Resolution to include loss of rent from the date of filing to the date of the hearing. The *Residential Tenancy Branch Rules of Procedure*, Rule 4.2, states that an that the Application for Dispute Resolution may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. Accordingly, I grant the landlord's request to amend their Application for Dispute Resolution to include the additional outstanding rent pursuant section 64(3)(c) of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession pursuant to section 55?

Is the landlord entitled to a monetary order for unpaid rent pursuant to section 67?

Is the landlord entitled to recovery of their filing fee for this application from the tenant pursuant to section 72?

Background and Evidence

The landlord testified that the tenancy started in February 2013 with a different landlord. The tenancy was transferred to the current landlord in April 2017. The tenant was obligated to pay rent in the sum of \$473.00 on the first day of each month. The tenant did not pay a security deposit.

The landlord provided a rent ledger showing the tenant owed rent arrears of \$1,995.00 as of February 1, 2019. The landlord testified that the tenant has not paid any rent for since December 2018.

Analysis

Pursuant to section 46(4) of the *Act*, tenant has five days after receipt of a notice to end a tenancy for unpaid rent to dispute the notice. In this matter, the Ten-Day Notice was served on the tenant on his door on February 6, 2019 by posting the notice on his door. Pursuant to section 90 of the *Act*, the notice is deemed to have been served three days later, being February 9, 2019. Accordingly, the tenants had five days after the date of service of February 9, 2019 to dispute the notice, that being February 14, 2019. However, the tenant did not file an application to dispute the notice and the deadline to dispute the notice has expired.

Section 46(5) of the *Act* states that tenants who do not timely file an application to dispute a notice to end tenancy for cause are 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 an application to dispute the landlord's Ten-Day Notice, I find that the tenants are conclusively presumed to have accepted that this tenancy ended on the effective date of the notice, being February 24, 2019. Accordingly, I grant the landlords' application for an order for possession pursuant to section 55 of the *Act*.

Based upon the undisputed testimony of the landlord and the landlord's rent ledger, I find that the tenant owed the landlord \$1,995.00 in unpaid rent through February 2019. Section 71(1) of the *Act* states that "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." Pursuant to section 71(1), I find the landlord is entitled to a monetary award of \$1,995.00 for unpaid rent through February 2019.

I also find that the Tenant owes \$874.00 for overholding the rental unit for the period of March 1, 2019 to April 30, 2019, calculated as described below.

Section 57 of the Act defines an "overholding tenant" as a tenant who continues to occupy a rental unit after the tenant's tenancy is ended. The section goes on to say a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

In the case before me, as per the Ten-Day Notice; I find the tenancy ended on February 24, 2019. However, I am satisfied from the landlords' undisputed testimony that the tenants continue to overhold the rental unit up to the date of the hearing on April 30, 2019.

Residential Tenancy Policy Guideline #3 states tenants are not liable to pay rent after a tenancy agreement has ended pursuant to Section 44 of the *Act*, however if tenants remain in possession of the premises (overholds), the tenants will be liable to pay occupation rent on a per diem basis until the landlords recovers possession of the premises.

As the tenant remained in the unit for the full rental periods of March 2019 and April 2019, the landlord is entitled to receive a total of \$874.00 for overholding that period, based on the rental amount \$473.00 per month for both March 2019 and April 2019.

In addition, since the landlord has been successful this matter, I award the landlords \$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 landlords are entitled to a monetary order of \$3,041.00, calculated as follows.

<u>Item</u>	<u>Amount</u>
Unpaid rent arrears through February 2019	\$1,995.00
March overholding damages	\$473.00
April overholding damages	\$473.00
Filing fee	\$100.00
Total	\$3,041.00

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 landlords may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I grant the landlords a monetary order in the amount of **\$3,041.00**. If the tenants fail 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: May 1, 2019

Residential Tenancy Branch