



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNRL-S, OPR, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on March 12, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or compensation;
- a monetary order for unpaid rent and utilities;
- an order to retain the security deposit;
- an order of possession for unpaid rent and utilities; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 9:30am on May 3, 2019 as a teleconference hearing. B.H. appeared on behalf of the Landlord and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 10 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that B.H. and I were the only persons who had called into this teleconference.

B.H. testified that the Application and documentary evidence package was served on the Tenant by registered mail on March 13, 2019. A copy of the Canada Post registered mail receipt was submitted in support. Based on the oral and written submissions of the B.H., and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on March 18, 2019 the fifth day after their registered mailing.

B.H. was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

During the hearing, B.H. indicated that between the time of the Landlord's Application made on March 12, 2019 and the hearing date, rent and utilities had not been paid for March, April and May 2019. The Landlord wished to amend the Application seeking a monetary order in the amount of \$5,174.70.

According to Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"); 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, the Application may be amended at the hearing. If an amendment to an Application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In light of the above, I find it is reasonable to amend the Landlord's Application to include unpaid rent and utilities for the months of March, April, and May 2019 in the amount of \$5,174.70.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession, in accordance with Section 55 of the Act?
2. Is the Landlord entitled to a Monetary Order for unpaid rent and utilities, in accordance with Section 67 of the Act?
3. Is the Landlord entitled to apply the security deposit to the monetary claims, in accordance with Section 72 of the Act?
4. Is the Landlord entitled to a monetary order for damage or compensation, in accordance with Section 67 of the Act?
5. Is the Landlord entitled to the return of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

B.H. testified that the tenancy began on May 1, 2013. B.H. stated that a rent increase came into effect on May 1, 2019 which increased the Tenant's rent from \$1,186.00 to \$1,215.00. The Tenant paid a security deposit in the amount of \$512.50 which the Landlord currently holds.

B.H. testified that the Tenant failed to pay rent and utilities when due for February 2019. As a result, the Landlord subsequently served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities in the amount of \$1,282.00, dated February 7, 2019 (the "10 Day Notice") with an effective vacancy date of February 17 2019 by posting it to the Tenant's door on February 7, 2019. The Landlord submitted a copy of the 10 Day Notice in support.

B.H. testified that the Tenant has not paid any amount of rent or utilities to the Landlord since the Notice was served to the Tenant and continues to occupy the rental unit. Currently, the Landlord is seeking an order of possession as well as a monetary order for unpaid rent in the amount of \$4,773.00, and \$305.70 for unpaid utilities. The Landlord submitted a copy of the Tenant rental ledger and a billing history report in support.

The Landlord is also seeking a monetary order in the amount of \$96.00 in relation to a towing charge which took place on July 6, 2018. B.H. testified that the Tenant had parked her vehicle in the fire lane and the vehicle needed to be towed as a result. The Landlord submitted a bill for the towing charge in support.

Lastly, the Landlord is seeking the return of their filling fee paid to make the application.

As noted above, the Tenant did not attend the hearing to dispute the Landlords evidence.

Analysis

Based on the unchallenged and affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26 of the Act explains that the Tenant must pay rent when it is due under the Tenancy Agreement, whether or not the Landlord complies with this Act, the

Regulations or the Tenancy Agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

Section 46 of the *Act* states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

I find based on the B.H.'s uncontested testimony that the Landlord served the 10 Day Notice dated February 7, 2019, with an effective vacancy date of February 17, 2019, by posting it on the Tenant's door on February 7, 2019. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 3 days later. I find the Tenant is deemed to have received the 10 Day Notice on February 10, 2019.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. Therefore, the Tenant had until February 15, 2019 to either pay the outstanding rent and utilities owed to the Landlord in full, or make an Application for dispute resolution.

I accept B.H.'s undisputed testimony that the Tenant did not pay any of the rent and utilities owed according to the 10 Day Notice within 5 days and there is no evidence before me that the Tenant disputed the 10 Day Notice. I find the Tenant is conclusively presumed to have accepted the tenancy ended on the corrected effective date of the 10 Day Notice, February 20, 2019, pursuant to section 46(5) of the *Act*.

I find that the 10 Day Notice complies with the requirements for form and content and as the effective date of the 10 Day Notice has passed, I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the *Act*. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I accept B.H.'s undisputed testimony that the Tenant has failed to pay rent for February, March, April and May 2019 in the amount of \$4,773.00. B.H. also testified that the Tenant has failed to pay utilities in the amount of \$305.70. Lastly, the Landlord is also seeking compensation for a towing charge in the amount of \$96.00, after the Tenant parked her vehicle in a fire lane on July 6, 2018.

In light of the above, I find the Landlord has established an entitlement to a monetary award for unpaid rent, unpaid utilities, and the cost of towing the Tenant's vehicle for a combined amount of \$5,174.70. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlord retain the portion of the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$4,762.20, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$4,773.00
Unpaid Utilities:	\$305.70
Towing Charge:	\$96.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$512.50)
TOTAL:	\$4,762.20

Conclusion

The Tenant has breached the Act by not paying rent and utilities to the Landlord when due. The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. This order should be served as soon as possible and may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$4,762.20. The monetary order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 03, 2019

Residential Tenancy Branch