



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Introduction

This matter originally proceeded by way of direct request proceeding, pursuant to section 55(4) of the Residential Tenancy Act (the “Act”), and dealt with an application for dispute resolution by the landlords for an order of possession for the rental unit due to unpaid rent and a monetary order for unpaid rent. On April 25, 2019, an adjudicator adjourned the matter to a participatory hearing which was held this date, Friday, May 24, 2019 at 9:30 a.m. Pacific Time. The Interim Decision written by the adjudicator dated April 25, 2019, should be read in conjunction with this decision.

At this hearing, two of the landlords and the tenant appeared and the hearing process was explained, along with instructions to the parties that the issues would be limited to dealing with the landlords’s request for an order of possession and a monetary order for unpaid rent. An opportunity was given to all parties to ask questions about the hearing process.

Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary relevant evidence submitted prior to the hearing, respond to the other’s evidence, and make submissions to me.

I have reviewed the oral, digital, and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (the “Rules”); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary and Procedural Matter

At the outset of the hearing, the tenant denied receiving the landlords’ original Notice of Direct Request Proceeding, the Notice of an Adjourned Hearing, the Application for Dispute Resolution (the “Application”) and documentary evidence. Upon inquiry, the

tenant said he called into the Residential Tenancy Branch (“RTB”) and spoke with a representative and was given the information about the hearing and the landlords’ application.

The landlords provided the Canada Post receipts showing the tracking number of the registered mail containing the hearing package and the information online showed that the tenant failed to collect the registered mail.

Under section 90 of the Act, documents served by registered mail are deemed received five days later. In this case, the Notice was mailed on April 25, 2019, and deemed received on April 30, 2019.

I note that failure to pick up or sign for registered mail does not constitute a reason for a Review Consideration under the Act.

The landlords originally served their application under the Direct Process request by attaching the documents to the tenant’s door, which does not comply with section 89(1) of the Act when seeking a monetary order. In this case, as the tenant attended the hearing, was fully aware of the issues being addressed, and failed to collect the registered mail containing the landlords’ original application, I find the tenant was sufficiently served the documents for purposes of the Act, pursuant to section 71(2)(b) of the Act. As a result, the hearing proceeded on the landlords’ request for a monetary order and an order of possession for the rental unit.

The landlords submitted that in addition to the rent owed as claimed in the original Application, the landlords have suffered a loss of rent for March, April, and May 2019 as the tenant continues to occupy the rental unit. As a result, I amend the landlords’ application to include rent owed for those months. I find this amendment does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement as the tenant continues to occupy the rental unit. Therefore, I amend the application to \$4,200.00 which includes unpaid rent and loss of rent through May 2019, pursuant to 4.2 of the Rules.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent?
- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?

Background and Evidence

The landlords submitted a copy of the tenancy agreement in evidence and testified that the tenancy began on December 15, 2018. The landlord submitted that monthly rent is \$1,400.00 and that the tenant was to pay \$700.00 on the 1st day of the month and \$700.00 on the 15th day of the month, per the written tenancy agreement. The tenant paid a security deposit of \$700.00 and a pet damage deposit of \$350.00 at the start of the tenancy, which the landlords continue to hold.

The landlords applied for dispute resolution on April 11, 2019, through the direct request process after a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated March 30, 2019, was served on tenant by posting to the tenant’s door on March 16, 2019. A copy of the 10 Day Notice was submitted in evidence. The landlord submitted that he inadvertently dated the Notice for the same day as the move-out date, or March 30, 2019.

The effective date listed on the 10 Day Notice was March 30, 2019 and indicates that \$700.00 in rent arrears was owed as of March 1, 2019.

The landlord testified that the tenant did not dispute the 10 Day Notice or pay the amount owing as indicated on the 10 Day Notice.

The landlord stated that the tenant continues to over-hold the rental unit and that the landlord suffered a loss of rent for the balance of March for \$700.00, and April and May 2019, rent of \$1,400.00 each, for a total of \$4,200.00 as a result. The landlords are seeking an order of possession and a monetary order and if they are entitled would like the recovery of the cost of the filing fee.

Tenant’s response-

The tenant agreed he had not paid rent for March, April, and May, 2019, and has not vacated the rental unit.

Analysis

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

Order of Possession - I accept the landlord's undisputed testimony that the tenant failed to pay the full amount of rent owed or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice, and that the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date on the 10 Day Notice, March 30, 2019. Therefore, pursuant to section 55 of the *Act* I grant the landlord an order of possession effective **two (2) days** after service on the tenant.

Monetary order - I accept the landlord's undisputed testimony that the tenant owes a total of \$4,200.00 in unpaid rent and loss of rent. I note that the testimony of the landlord matches the amount being claimed at this hearing.

As the landlords' application had merit, I grant the landlords the recovery of the **\$100.00** filing fee pursuant to section 72 of the *Act*.

Given the above, I find the landlords have established a total monetary claim of **\$4,300.00** comprised of unpaid rent, loss of rent, and the recovery of the cost of the filing fee. As the landlords continues to hold the tenant's security deposit of \$700.00 and pet damage deposit of \$350.00 which have accrued no interest to date, and pursuant to section 72 of the *Act*, I authorize the landlords to retain the tenant's full security deposit of \$700.00 and pet damage deposit of \$350.00 in partial satisfaction of the landlords' monetary claim. Pursuant to section 67 of the *Act*, I grant the landlords a monetary order for the balance owing by the tenant to the landlords in the amount of \$3,150.00.

Conclusion

The landlords' application is successful.

The landlords have been granted an order of possession effective two (2) days after service on the tenant, which must be served on the tenant and may be enforced in the Supreme Court of British Columbia. I find the tenancy ended on March 30, 2019, and that the tenant has been over-holding the rental unit since that date.

The landlords have established a total monetary claim of \$4,300.00 as described above. The landlords have been authorized to retain the tenant's full security deposit of

\$700.00 and pet damage deposit in partial satisfaction of the landlords' monetary claim. The landlords are granted a monetary order for the balance owing by the tenant to the landlord in the amount of \$3,150.00.

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

Dated: May 24, 2019

Residential Tenancy Branch