



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METCAP LIVING MANAGEMENT INC. and IMH POOL XIILP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL FFL

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession pursuant to section 46;
- A monetary order for unpaid rent pursuant to section 67; and
- Authorization to recover the filing fee for this application pursuant to section 72.

The agents SP and AG attended the hearing representing the landlord “(the landlord)”. The landlord was given an opportunity to present affirmed testimony, call witnesses and submit evidence.

The tenant AA attended the hearing and testified that she did not represent the tenant DA. The tenant AA acknowledged receipt of the Notice of Hearing and the Application for Dispute Resolution. The tenant AA was given an opportunity to present affirmed testimony, call witnesses and submit evidence.

The tenant DA did not attend the hearing. I kept the teleconference line open from the time the hearing was scheduled, plus an additional twenty-five minutes, to allow the tenant DA the opportunity to call. The teleconference system indicated only the landlord, the tenant AA and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant DA had been provided.

The landlord’s agent AD testified he posted the Notice of Hearing and Application for Dispute Resolution to the tenant’s door on March 21, 2019. The tenant AA

acknowledged receipt of the documents. Section 90 of the *Act* deems the tenants to have received the documents 3 days later, on March 24, 2019.

Pursuant to sections 89 and 90. I find the landlord served the tenants with the Notice of Hearing and Application for Dispute Resolution on March 24, 2019.

The parties testified the tenant AA vacated the unit in April 2019 and the tenant DA continues to reside in the unit.

Amendment to increase monetary award requested

The landlord requested an amendment to the landlord's application to increase the monetary order requested. The landlord's application, submitted in February 2019, pre-dated the due date for rent for April and May 2019 and as such the landlord's claim does not reflect outstanding rent for those months.

As the tenant AA vacated the unit in April 2019, the landlord requested an increase in the monetary order from \$1715.51 to **\$3,712.11** as follows:

- With respect to the tenant AA, to increase the monetary award for additional rent outstanding for the month of April 2019 for a total of **\$3,214.39** calculated as follows:

ITEM	AMOUNT
Outstanding rent owing March 18, 2019	\$1,715.51
Rent for April 2019	\$1,996.60
Monetary Order Requested – Tenant AA	\$3,712.11

- With respect to the tenant DA, to increase the monetary award for additional rent outstanding for the months of April and May 2019 for a total of **5,708.71** calculated as follows:

ITEM	AMOUNT
Outstanding rent owing March 18, 2019	\$1,715.51
Rent for April 2019	\$1,996.60

Rent for May 2019	\$1,996.60
Monetary Order Requested - Tenant DA	\$5,708.71

The tenant AA consented to the amendment with respect to the landlord's claim against the tenant AA.

Section 64(3)(c) of the *Act* and section 4.2 of the Rules of Procedure provide that a landlord's monetary claim 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.

I find the tenants could reasonably anticipate the landlord's claim would be amended to include outstanding rent for the months of April and May 2019. The amendment would not be prejudicial to the respondents.

Pursuant to my authority under section 64(3)(c) of the *Act* and Rule 4.2, and further to the consent of the tenant AA, I amended the landlord's applications to increase the landlord's overall claim as set out above for unpaid rent for the month April 2019 with respect to tenant AA and unpaid rent for the months of April and May 2019 with respect to tenant DA.

The landlord also requested reimbursement of the filing fee against the tenant DA and the offsetting of one-half of the security deposit against each monetary award.

Issue(s) to be Decided

Is the landlord entitled to an order of possession pursuant to section 46 of the *Act*?
 Is the landlord entitled to a monetary order pursuant to section 67 of the *Act*?
 Is the landlord entitled to retain the security deposit pursuant to section 72 of the *Act*?
 Is the landlord entitled to reimbursement of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The landlord provided uncontradicted affirmed testimony as the tenant AA acknowledged the landlord's evidence and the tenant DA did not appear at the hearing.

The parties entered into a fixed term tenancy agreement beginning January 1, 2019 for monthly rent of \$1,996.50 payable on the first of the month. The tenants paid a security deposit to the landlord at the beginning of the tenancy of \$998.24. The landlord holds the security deposit. The tenants have not provided written authorization to the landlord to apply the security deposit to outstanding rent.

The landlord submitted a copy of the tenancy agreement.

The landlord submitted a copy of a ledger showing rent paid and owing by the tenants.

The landlord testified the tenant AA vacated the unit in April 2019 and is currently in arrears of rent as follows:

ITEM	AMOUNT
Outstanding rent owing March 18, 2019	\$1,715.51
Rent for April 2019	\$1,996.60
Outstanding Rent – tenant AA	\$3,712.11

The tenant AA acknowledged the tenant AA is in arrears of rent as set out above.

The landlord testified the tenant DA is currently in arrears of rent as follows:

ITEM	AMOUNT
Outstanding rent owing March 18, 2019	\$1,715.51
Rent for April 2019	\$1,996.60
Rent for May 2019	\$1,996.60
Outstanding Rent – tenant DA	\$5,708.71

The landlord testified a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten-Day Notice”) was mailed to the tenants at the unit by regular mail on February 21, 2019 thereby effecting service under section 90 of the *Act* on February 26, 2019. The tenant AA acknowledged service and receipt of the Ten-Day Notice.

The landlord submitted a copy of the Ten-Day Notice as evidence which contained an effective date of March 8, 2019.

The Ten-Day Notice provides the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution, or the tenancy would end on the stated effective vacancy date of March 8, 2019.

The landlord testified the tenants did not pay rent in full after service of the Ten-Day Notice and did not make an application for dispute resolution. The landlord provided uncontradicted testimony the full amount claimed remains unpaid and owing to the landlord.

The landlord submitted a ledger showing the rent owing and paid during the relevant portion of this tenancy indicating rent outstanding as stated above at the time the Ten-Day Notice was served.

The tenant DA continues to occupy the unit.

Analysis

I find the form and content of the Ten-Day Notice complies with section 52 of the *Act*.

I find the tenants were served with the Ten-Day Notice on February 26, 2019 in accordance with sections 88 and 90 of the *Act*.

I find the tenants did not pay the overdue rent or dispute the Ten-Day Notice within the five-day period following service.

Therefore, pursuant to section 46(5), the tenants are conclusively presumed to have accepted the tenancy ends on the effective date of the notice March 8, 2019 requiring the tenants to vacate the rental unit by that date.

As the tenant DA continues to occupy the unit, I find the landlord is entitled to an order of possession under section 46, effective two days after service.

I therefore grant the landlord an order of possession effective two days after service.

Based on the uncontradicted evidence of the landlord and the consent of the tenant AA, I grant the landlord a monetary award against the tenant AA pursuant to section 67 for outstanding rent in the amount of **\$3,712.11**.

Based on the uncontradicted evidence of the landlord, I grant the landlord a monetary award against the tenant DA pursuant to section 67 for outstanding rent in the amount of **\$5,708.71**.

Further to section 72, I award the landlord authority to apply the security deposit to the monetary award as requested.

As the landlord was successful in this application, I award the landlord the amount of \$100.00 for reimbursement of the filing fee against the tenant DA as requested.

In summary, I grant the landlord a monetary order for **\$3,214.39** against the tenant AA, to which she consented, calculated as follows:

ITEM	AMOUNT
Outstanding rent owing March 18, 2019	\$1,715.51
Rent for April 2019	\$1,996.60
(Less one-half security deposit)	(\$499.12)
Monetary Order – Tenant AA	\$3,212.99

In summary, I grant the landlord a monetary order for **\$5,309.59** against the tenant DA calculated as follows:

ITEM	AMOUNT
Outstanding rent owing March 18, 2019	\$1,715.51
Rent for April 2019	\$1,996.60
Rent for May 2019	\$1,996.60
Reimbursement filing fee	\$100.00
(Less one-half security deposit)	(\$499.12)
Monetary Order – tenant DA	\$5,309.59

Conclusion

I grant the landlord a monetary order in the amount of **\$3,212.99** against the tenant AA.
 I grant the landlord a monetary order in the amount of **\$5,309.59** against the tenant DA.

These orders must be served on the tenants. If the tenants fail to comply with this order, the landlord may file the orders in the Provincial Court (Small Claims) to be enforced as an order of that Court.

I grant the landlord an order of possession **effective two (2) days** after service on the tenants. This order must be served on the tenants. If the tenants fail to comply with this order, the landlord may file the order with the Supreme Court of British Columbia 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 09, 2019

Residential Tenancy Branch