



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FFL, OPRM-DR

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "Ten-Day Notice") pursuant to section 46.

This hearing also dealt with the landlord's application pursuant to the *Act* for:

- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent and for damage to the unit pursuant to section 67; and,
- authorization to recover the filing fee for this application pursuant to section 72.

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

The tenant did not attend the hearing. I kept the teleconference line open for the duration of the hearing to allow the tenant the opportunity to call. I confirmed the correct participant code was provided to the tenant.

The landlord testified that they served the tenant with the Notice of Hearing and Application for Dispute Resolution and the landlord's evidence by registered mail sent on June 28, 2019 in accordance with section 89 of the *Act*. The landlord provided the Canada Post tracking number in support of service referenced on the first page of the decision. Based on the undisputed testimony of the landlord, I find the landlord served the tenant with the documents pursuant to section 89 of the *Act*.

The landlord testified that they had not received the tenant's Notice of Hearing and Application for Dispute Resolution and they were not even aware of the tenant's application before the hearing. The tenant did not provide an evidence regarding service of his Notice of Hearing and Application for Dispute Resolution. I am not satisfied that the tenant has sufficiently his Notice of Hearing and Application for Dispute Resolution.

Preliminary Matter: Non-Appearance of Tenants at the Hearing

The applicant tenants did not appear at the hearing. Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing – If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to reapply.

As the applicant tenants did not attend the hearing, and in the absence of any evidence or submissions, I order the tenants' application be dismissed without leave to re-file.

Preliminary Matter: Amendment of Application for Additional Damages for Unpaid Rent

The landlord asked for permission to amend its application to increase the monetary claim to include an additional unpaid rent since the tenant has continued to reside in the rental unit without paying rent since this application was filed.

Rules of Procedure 4.2 states that:

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.

Rules of Procedure 4.2 specifically contemplates a situation such as this where additional rent has become owing since the filing of the application to reasonably anticipated circumstances. Accordingly, I grant the landlord's request to amend its application to increase the claim for unpaid rent for occupancy of the rental unit up to the date of this hearing pursuant to section 64(3)(c) of the *Act* and rule 4.2 of the *Rules of Procedure*.

Preliminary Matter: Amendment of Application to Apply Security Deposit to Damages

The landlord asked for permission to amend its application to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

As set forth above, *Rules of Procedure* 4.2 states that a party can amend its application at the hearing in circumstances when the proposed amendment can reasonably be anticipated. I find that a request to apply the security deposit to rent arrears should be reasonably anticipated. Accordingly, I grant the landlord's request to amend its application to retain all or a portion of the

tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 64(3)(c) of the *Act* and rule 4.2 of the *Rules of Procedure*.

Issue(s) to be Decided

Is the landlord entitled an Order of Possession for non-payment of rent pursuant to section 55?

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

If the landlord is entitled to a monetary order, is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

Tenancy agreement: started on June 1, 2018. The monthly rent was \$1,250.00 payable on the first day of each month. The tenant paid a \$625.00 security deposit. The landlord issued a notice of rent increase on February 7, 2019 increasing the monthly rent to \$1,281.25 effective on June 1, 2019.

In a previous Residential Tenancy Branch hearing held on May 16, 2019, it was ordered that the tenant may deduct the sum of \$250.00 from a future rent payment. the previous hearing number is referenced on the first page of this decision. In compliance with this order, the landlords permitted a \$250.00 credit to the tenant's June 2019 rent.

The tenant paid \$500.00 on June 3, 2019 and the landlord issued a use and occupancy receipt. The landlord claims that the tenant owes \$531.25 for June 2019 rent after crediting the tenant for the May 2019 order and the \$500.00 use and occupancy payment. The landlord testified that the tenant has not made any payments to the landlord since the June 3, 2019 payment of \$500.00.

The Ten-Day Notice was signed on June 6, 2019 and stated unpaid rent of \$531.25 as of June 1, 2019. The stated move-out date was June 19, 2019. The landlord provided a witnessed proof of service stating that the Ten-Day Notice was posted on the tenant's door on June 6, 2019.

The landlord testified that the tenant still occupies the rental unit and the landlord has requested monetary compensation for the tenant's continuing possession.

Analysis

Section 55(1) of the *Act* reads as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord's notice to end tenancy complies with section 52[form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In this matter the tenant has filed an application to cancel the Ten-Day Notice and the tenant's application has been dismissed herein. Furthermore, based on the Ten-Day Notice entered as written evidence and the landlord's sworn testimony, I find that the landlord's Ten-Day Notice complies with section 52 of the *Act*.

In addition, based on the landlord's undisputed testimony, I find that that tenant has not paid the full amount of the stated unpaid rent on the Ten-Day Notice.

Based on my decision to dismiss the tenant's application for dispute resolution and my finding that the landlord's Ten-Day Notice complies with section 52 of the *Act*, I find that this tenancy ended on the effective date of the Ten-Day Notice, June 19, 2019, and the landlord is entitled to an Order of Possession effective two days after service on the tenant.

Based upon the undisputed testimony of the landlord and the terms of tenancy agreement, I find that the Tenant was obligated to pay the monthly rent in the amount of \$1,281.25, on time and in full each month, up to and including the rental period commencing on June 1, 2019.

I find that the tenants have not paid the entire rent for June 2019. Specifically, I find that the tenants paid \$500.00 on June 3, 2019 and the tenant was entitled to a rent credit \$250.00 based on the previous Residential Tenancy Branch order. This leaves an outstanding balance of \$531.25 payable for the June 2019 rent. 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 \$531.25 for unpaid rent in June 2019.

I also find that the Tenant owes \$1,033.25 for overholding the rental unit for the period of July 1, 2019 to July 25, 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 June 19, 2019. However, I am satisfied from the landlord's undisputed testimony that the tenant continues to overhold the rental unit up to the date of the hearing on July 25, 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 from July 1, 2019 to the date of the hearing on July 25, 2019, I find that the landlords are entitled to overholding rent in the amount of \$1,033.25 (25 days at the per diem rate of \$41.33).

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 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 \$1,039.50, calculated as follows.

<u>Item</u>	<u>Amount</u>
January rent unpaid	\$531.25
February overholding damages	\$1,033.25
Less security deposit	(\$-625.00)
Filing fee	\$100.00
Total	\$1,039.50

Conclusion

I find the landlords are 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 landlord a monetary order in the amount of **\$1,039.50**. 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: July 25, 2019

Residential Tenancy Branch