Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPRM-DR

Introduction

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

- a monetary order for unpaid rent pursuant to section 67;
- authority to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- an Order of Possession pursuant to section 55; and,
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The landlord's lawyer attended the hearing on behalf of the landlord. The landlord had full opportunity to provide affirmed testimony, present evidence, and make submissions.

The tenants did not attend the hearing. I kept the teleconference line open for the duration of the hearing to allow the landlord 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 tenants.

The landlord submitted evidence showing the landlord served the tenants with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on July 7, 2019 and deemed received by the tenants five days later, on July 12, 2019, under section 90 of the *Act*. The tenant provided the Canada Post tracking numbers in support of service referenced on the first page of the decision. Based on the evidence submitted, I find the landlord served the tenants with the documents pursuant to section 89 of the *Act*.

Preliminary Matters: Additional Monetary Claim for Continued Possession

At the commencement of the hearing, the landlord asked for permission to amend the claim for monetary damages to include compensation for continued possession of the rental unit by the tenants since the date of filing of the application for dispute resolution.

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 monetary damages to include compensation for continued possession 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.*

Issue(s) to be Decided

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

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 an order of possession pursuant to section 55?

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

Background and Evidence

The tenancy agreement states that the tenancy started on November 15, 2018. The monthly rent was $2,800.00, due on the first day of each month. The tenants paid a $1,400.00 security deposit and $200.00 for a key deposit.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the "Ten-Day Notice") on June 14, 2019. The Ten-Day Notice stated unpaid rent of $2,800.00 as of June 1, 2019. The landlord provided a witnessed proof of service stating the Ten-Day Notice was hand delivered to a person at the rental unit on June 14, 2019. The landlord testified that the individual who personally received the Ten-Day Notice was an adult and he appeared to reside at the rental unit.

The landlord testified that the tenants paid $910.00 for rent on June 19, 2019 towards the June 2019 rent. A balance of $1,890.00 in rent remained outstanding for June 2019. The tenants remain in possession of the rental unit. The landlord testified that tenants have not made any payments to the landlord after the June 19, 2019 payment of $910.00.

The landlord is requesting an order of possession and an order of monetary compensation for the tenants' continued possession of the rental unit.

Analysis

Pursuant to *Residential Tenancy Branch Rules of Procedure* ("RTB Rules"), Rule 6.6 states that the applicant, in this case the landlord, has the onus of proof to prove their case on a balance of probabilities. This means that RTB Rule 6.6 requires the landlord to prove that, more likely than not, the facts occurred as claimed in order to prevail in their claim.

Section 46 of the *Act* states that a landlord may end a tenancy if rent is unpaid after it is due by giving the tenant a ten-day notice to end tenancy. In this matter, the landlord issued a Ten-Day Notice stating unpaid rent of $2,800.00.

Pursuant to section 46(4) of the *Act*, tenants have five days after receipt of a notice to end a tenancy for unpaid rent to dispute the notice. In this matter, I find that the Ten-Day Notice was properly served on the tenants by delivering the notice to an adult that appeared to reside in the rental unit on June 14, 2019 pursuant to section 88 of the *Act*.

Accordingly, the tenants had five days after the date of service of June 14, 2019 to dispute the notice or pay the entire amount of outstanding rent stated in the notice.

I find that the tenant did not file an application to dispute the notice or pay the entire amount of outstanding rent stated in the notice prior to the expiration of the deadline set forth in section 46(4). Although the tenants did make a partial payment of $910.00, the tenants are required to pay the entire amount stated in the notice to end tenancy to cancel the notice. The tenants have not done and the deadline to pay the outstanding rent or dispute the notice has expired pursuant to section 46(4).

Section 55 of the *Act* states that a landlord may request on order of possession if a notice to end tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

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 $2,800.00, on time and in full each month, up to and including the rental period commencing June 1, 2019. I find that the tenants have not paid the entire rent due for June 2019 or any rent thereafter.

I find the form and content of the Ten-Day Notice does comply with section 52 of the *Act* and the landlord has established on the balance of probabilities that the unpaid rent stated in the Ten-Day Notice was owing as stated in the notice. Accordingly, I find the landlord is entitled to an order of possession effective two days after service on the tenant.

Further, section 7(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 $1,890.00 for unpaid rent in June 2019.

I also find that the Tenant owes $4,877.36 for overholding the rental unit for the period of July 1, 2019 to August 23, 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 24, 2019. However, I am satisfied from the landlord's undisputed testimony that the tenants continue to overhold the rental unit up to the date of the hearing on August 23, 2019.

Residential Tenancy Policy Guideline #3 states that 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 tenants remained in the unit for the full rental periods of July 1, 2019 to July 31, 2019, the landlords are entitled to receive a total of $2,800.00 for overholding that period. In addition, since the tenants remained in the rental unit from August 1, 2019 until the date of the hearing on August 23, 2019, I find that the landlords are entitled to overholding rent in the amount of $2,077.36 (23 days at the per diem rate of $90.32).

Based on the undisputed testimony of the landlord and the tenancy agreement, I find that the landlord holds a security deposit of $1,400.00 and a key deposit of $200.00 which may both 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 $5,267.36, calculated as follows.

Item	Amount
June 2019 rent unpaid	$1,890.00
July 2019 overholding damages	$2,800.00
August 2019 overholding damages	$2,077.36
Less security deposit	-$1,400.00
Less key deposit	-$200.000

Filing fee	$100.00
Total	**$5,267.36**

Conclusion

I find the landlord is entitled to an order of possession effective **two 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 and be enforced as an order of that Court.

I grant the landlord a monetary order in the amount of **$5,267.36.** 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: August 23, 2019

Residential Tenancy Branch