



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

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;
- Authorization to apply the security deposit to the monetary award pursuant to section 72; and
- Authorization to recover the filing fee for this application pursuant to section 72.

HC attended with both landlords as their agent ("the landlord"). The tenant JM attended.

The landlord testified the tenants were served with the Notice of Hearing and evidence package by posting to the tenants' door on August 14, 2019. The tenant JM acknowledged receipt. Further to sections 89 and 90 of the Act, I find the tenants were served with the documents.

The tenant JM stated the tenant RB had vacated the unit and the tenant JM intended to do so.

Preliminary issue:

The landlord requested an amendment to the landlord's application to increase the monetary order requested from \$1,200.00 to \$3,600.00 to include additional outstanding rent for the months of September and October 2019. The landlord's application, submitted in August 2019, pre-dated the due date for rent for September and October

2019 and as such the landlord's claim does not reflect outstanding rent for those months.

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 March and April 2019. The amendment would not be prejudicial to the respondent.

Pursuant to my authority under section 64(3)(c) of the *Act* and Rule 4.2, I amended the landlord's application to increase the landlord's overall claim by \$2,400.00 for unpaid rent for the months of September and October 2019. The total monetary order requested by the landlord is \$3,600.00 as well as \$100.00 reimbursement of the filing fee.

Issue(s) to be Decided

Is the landlord entitled to:

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

Background and Evidence

The parties agreed the tenancy started on August 16, 2018 for monthly rent of \$1,200.00 payable on the first of the month. At the beginning of the tenancy, the tenants paid the landlord a security deposit of \$600.00 which the landlord holds. 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 testified the tenants are currently in arrears of rent of \$3,600.00.

The landlord testified a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Ten-Day Notice") was posted to the tenant's door on August 2, 2019 thereby effecting service under section 90 of the *Act* on August 5, 2019.

The landlord submitted a copy of the Ten-Day Notice as evidence.

The Ten-Day Notice provides the tenant 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, which was inadvertently blank on the submitted copy, (corrected to August 15, 2019).

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

The tenant JM acknowledged owing rent for the month of October 2019 but denied owing rent for August and September 2019, stating that the tenant RB, who did not attend the hearing, had paid the rent. The tenant JM provided no documentary evidence in support of his claim that rent for these two months was paid.

The landlord submitted copies of receipts for June and July 2019 showing the rent paid for those months. The landlord stated that the tenants had not paid any rent after that.

The tenant JM 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 August 5, 2019 in accordance with sections 88 and 90 of the *Act*.

I do not accept the tenant JM's evidence as believable that the absent tenant RB paid the rent for the months of August and September 2019. This assertion is unsupported by any documentary evidence and is denied by the landlord who submitted clear, compelling and credible verbal and documentary evidence.

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 August 15, 2019 (as corrected) requiring the tenants to vacate the rental unit by that date.

As the tenant JM 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.

I also grant the landlord a monetary award pursuant to section 67 for outstanding rent in the amount of \$3,600.00.

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

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

In summary, I grant the landlord a monetary order for **\$3,512.50** calculated as follows:

ITEM	AMOUNT
Award to landlord for outstanding rent	\$3,600.00
Reimbursement of filing fee	\$100.00
(Less security deposit)	(\$600.00)
Monetary Order	\$3,100.00

Conclusion

I grant the landlord a monetary order in the amount of **\$3,100.00**. This order must be served on the tenants. If the tenants fail to comply with this order, the landlord may file the order 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: October 07, 2019

Residential Tenancy Branch