



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL-S MNRL-S OPU

Introduction

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

- authorization 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 for non-payment of utilities pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$12,095.44 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:12 pm in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. The landlord attended the hearing, as did her agent ("**PC**"), and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, PC, and I were the only ones who had called into this teleconference.

PC testified that the tenant was served the notice of dispute resolution form and supporting evidence package via registered mail on October 13, 2019. The landlord provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenant was deemed served with this package on October 18, 2019, five days after the landlord mailed it, in accordance with sections 88, 89, and 90 of the Act.

Preliminary Issue – Amendment of Claim

At the hearing the landlord sought to further amend her application to include a claim for November 2019 rent which PC testified remains outstanding.

Rule 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.

In this case, the landlord is seeking compensation for unpaid rent that has increased since she first applied for dispute resolution, I find that the increase in the landlord's monetary claim should have been reasonably anticipated by the tenant. Therefore, pursuant to Rule 4.2 and section 64 of the Act, I order that the landlord's application be amended to include a claim for November 2019 rent.

Preliminary Issue – Identity of Tenant

PC testified that the last name of the tenant written on the tenancy agreement (which was signed by the tenant) is not accurate. He testified that the landlord brought this application against the tenant as named on the tenancy agreement, as the landlord had previously attempted to obtain the relief sought by way of a direct request (which was made using the tenant's correct last name) which was denied due to the discrepancy between the tenant's last name as written on the tenancy agreement and the on the application.

He testified that the tenant's correct last is "C" (full name recorded on the cover of the decision) and not "K" (as listed on the tenancy agreement and the application for dispute resolution.

The landlord also submitted a copy of a past participatory arbitration hearing of the landlord (which was dismissed) relating to the same rental property dated July 16, 2019, which identifies the tenant as "AC" and not "AK".

Based on the evidence of PC, I find that the tenant goes by the name "AC" as well as "AK". I am not certain which of the two is the tenant's correct legal name.

Pursuant to Rule 4.2, I order that the tenant's name be amended on to include "(also known as "AC")". Any orders made following the decision will include the amended name of the tenant in its style of cause.

Issue(s) to be Decided

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order for \$14,295.44;
- 3) recover her filing fee; and
- 4) apply the security deposit against any monetary order made?

Background and Evidence

While I have considered the documentary evidence of the landlord and the testimony of PC, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting December 1, 2018. Monthly rent is \$2,200 plus hydro and is payable on the first of each month. The tenant paid the landlord a security deposit of \$1,100. The landlord still retains this deposit.

The landlord's monetary claim is for \$14,295.44, representing the following:

Rental Arrears (May to November 2019)	\$13,900.00
Unpaid Hydro	\$195.44
Strata Fine	\$200.00
Total	\$14,295.44

PC testified that the tenant has not paid monthly rent in since May 2019 (and only made a partial payment in that month). He testified that the tenant's rental arrears are as follows:

May 2019 Arrears	\$700.00
June 2019 Arrears	\$2,200.00
July 2019 Arrears	\$2,200.00
August 2019 Arrears	\$2,200.00
September 2019 Arrears	\$2,200.00
October 2019 Arrears	\$2,200.00
November 2019 Arrears	\$2,200.00
Total	\$13,900.00

The landlord entered a number of notices from her bank which show that cheques provided by the tenant to the landlord are not able to be cashed due to insufficient funds in the tenant's account.

PC testified that the landlord has issued three One Month Notices to End Tenancy, as follows:

- 1) on May 1, 2019, served by posting on the rental unit door (the "**May Notice**");
- 2) on July 26, 2019, served in person (the "**July Notice**"); and
- 3) on October 13, 2019, served by registered mail as part of the evidence package for this hearing (the "**October Notice**").

PC testified that the tenant has not yet vacated the rental unit.

PC also testified that the tenant failed to transfer the BC Hydro bill into her name at the start of the tenancy. He testified that it was not transferred until January 2019. He testified that the landlord was bill \$195.44 in hydro expenses for the period of November 28, 2018 to January 28, 2019 that ought to have been paid for by the tenant. He submitted a copy of a BC Hydro bill for this time period support this amount.

PC testified that the tenant has caused a number of noise complaints to be filed by neighbours with the strata corporation in which the rental unit is located. He testified that the landlord was fined \$200 as a result of these complaints. The landlord submitted numerous letters from the strata's property management company into evidence regarding these complaints, and a letter dated August 21, 2019 in which the strata corporation levied a \$200 fine.

Analysis

Order of Possession

I find that the tenant was duly served with the May Notice and July Notice, and did pay the rental arrears or dispute either of them within 5 days of receipt, or at all. As such, pursuant to section 46(5) of the Act, I find that the tenant is conclusively presumed to have accepted that the tenancy ended on the corrected effective date listed on the July Notice (August 5, 2019).

As such, I grant an order of possession to the landlord effective two days after the landlord serves it on the tenant.

I note that the October Notice is not a valid basis for issuing an order of possession in this application, as it was served on the tenant after this application was filed by the landlord.

Monetary Claim

1. **Rental Arrears**

I find that the tenant is obligated to pay monthly rent to the landlord in the amount of \$2,200. I accept the landlord's uncontroverted evidence that the tenant has failed to pay monthly rent in full since May 2019, and that the tenant is currently \$13,900 in arrears.

Section 26 of the Act requires that the tenant pay rent when it is due:

Rules about payment and non-payment of rent

26 (1)A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

As such, I order that the tenant pay the landlord the full amount of arrears.

2. Unpaid Hydro

I find that, pursuant to the tenancy agreement, hydro is not included in the monthly rent, and that the tenant was obligated to pay it from the start of the tenancy.

I find that the landlord paid the BC Hydro bill for the period of time between November 28, 2018 and January 28, 2019 (61 days). I find that the tenant's obligation to pay the BC Hydro bill started on December 1, 2019 (the start of the tenancy). As such, the tenant is not obligated to pay for the period of November 28, 29, or 30, 2018. Accordingly, I order that the tenant the landlord pay \$185.60 (\$3.20/day x 58 days), representing 58 days of hydro usage not included in the tenancy agreement.

3. Strata Fine

During the hearing, I advised the landlord that she had been successful on this part of her claim. However, upon further reflection, I must reverse my position. Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

None of the tenancy agreement, the Act or the Act's regulations require that the tenant refrain from disturbing his neighbours. As such, there is no basis upon which I may make a monetary award. I note that section 146 of the *Strata Property Act*, SBC 1998, c 43 requires the landlord to "give the prospective tenant the current bylaws and rules, and a Notice of Tenant's Responsibilities in the prescribed form." The proscribed form is often called a "Form K".

A Form K includes the following terms:

- 1) Under the *Strata Property Act*, a tenant in a strata corporation **must** comply with the bylaws and rules of the strata corporation that are in force from time to time (current bylaws and rules attached).
- 2) The current bylaws and rules may be changed by the strata corporation, and if they are changed, the tenant **must** comply with the changed bylaws and rules.
- 3) If a tenant or occupant of the strata lot, or a person visiting the tenant or admitted by the tenant for any reason, contravenes a bylaw or rule, the tenant is responsible and may be subject to penalties, including fines, denial of access to recreational facilities, and if the strata corporation incurs costs for remedying a contravention, payment of those costs.

These terms create an obligation for a tenant to compensate the landlord for any fines their actions cause the landlord to incur.

A signed Form K acts as an addendum to the tenant agreement.

The landlord did not submit a Form K into evidence and PC did not give oral testimony as to its existence. As such, I am unsure if one exists.

As such, I decline to award the landlord any amount representing the recovery of the strata fines.

Conclusion

Pursuant to section 55, I order that the tenant deliver full and peaceable vacant possession and occupation of the rental unit to the landlord within two days of being served with this order by the landlord. This order may be filed and enforced in the Supreme Court of British Columbia.

Pursuant to section 72(1), as the landlord has been substantially successful in her application, she may recover her filing fee from the tenant.

Pursuant to section 72(2), the landlord may retain the security deposit (\$1,100) in partial satisfaction of the monetary orders made in this decision.

Pursuant to section 67, I order that the tenant pay the landlord \$13,085.60, representing the following:

Rental Arrears (May to November 2019)	\$13,900.00
Unpaid Hydro	\$185.60
Filing fee	\$100.00
Security Deposit Credit	-\$1,100.00
Total	\$13,085.60

This monetary order may be filed and enforced in the Provincial Court of British Columbia.

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: November 13, 2019

Residential Tenancy Branch