



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

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 tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$1,800.00 pursuant to section 67;
- a monetary order for damage to the rental unit in the amount of \$765.00 pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$3,637.15 pursuant to section 67;
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:45 pm in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 pm. The landlord and her property manager ("KM") attended the hearing 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, KM, and I were the only ones who had called into this teleconference.

KM testified that the tenants were each served the notice of dispute resolution form and supporting evidence package via registered mail on November 27, 2019. The landlord

provided two Canada Post tracking number confirming these mailing which are reproduced on the cover of this decision. I find that the tenants are deemed served with this package on December 5, 2019, five days after the landlord mailed them, 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 December 2019 rent which she testified remains outstanding.

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.

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 for non-payment of rent should have been reasonably anticipated by the tenants. 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 December 2019 rent.

Preliminary Issue – Severing of Claim

The landlord's monetary claim involves seeking compensation for damage to the interior of the rental unit. The landlord testified that she has not been able to gain access to the rental unit to properly document this damage. She testified that she is only aware of the damage due to seeing it when she entered to unit to repair the hot water tank. She also testified that she is unsure if there is other, yet undetected, damage to the rental unit.

In the circumstances, I find that the landlord's monetary claim for compensation for damage to the rental unit has been brought prematurely. A claim for compensation for damage to the rental unit and for money owed or compensation for damage or loss under the Act (which, in this case are related to damage or suspected damage to the rental unit), are more properly brought at the end of the tenancy. The landlord testified that she would likely need to bring a second monetary claim to recover for further damages once the tenancy ended and she could fully inspect the rental unit.

As such, and with the consent of the landlord, I find that it is appropriate, pursuant to Rule of Procedure 2.3, to sever the following of the landlord's claims the rest of her application:

- a monetary order for damage to the rental unit in the amount of \$765.00 pursuant to section 67; and
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$3,637.15 pursuant to section 67

I dismiss these portions of the landlord's claim, which in addition to being premature, are also not related to the balance of the landlord's claim, with leave to reapply.

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order of \$2,700 to recover unpaid rent;
- 3) to retain the security deposit in partial satisfaction of any monetary order made; and
- 4) recover her filing fee from the tenants.

Background and Evidence

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

The parties entered into a written, periodic tenancy agreement starting May 1, 2019. Monthly rent is \$900 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$500. The landlord still retains this deposit.

The landlord testified that the tenants have not paid rent for the months of October, November, or December 2019. On October 1, 2019, the landlord served the tenants with the Notice in person. The Notice listed an effective date of October 11, 2019.

KM testified that the tenants have not paid any part of the rental arrears, and, to her knowledge, have not applied to cancel the Notice.

Analysis

In accordance with section 88 of the Act, I find that the tenants were served with the Notice on October 1, 2019.

I find that the tenants are obligated to pay monthly rent in the amount of \$900, as established in the tenancy agreement. Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement. I accept the evidence before me that the tenants have failed to pay the balance of rental arrears due by December 1, 2019, in the amount of \$2,700, comprised of the balance of unpaid rent owed for October, November, and December 2019.

I accept the landlord's undisputed evidence and find that the tenants did not pay the rent owed in full within the five days granted under section 46(4) of the Act and did not apply to dispute the Notice within that five-day period.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, October 11, 2019.

Therefore, I find that the landlord is entitled to an order of possession.

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.

Therefore, I find that the landlord is entitled to a monetary order of \$2,700 representing rental arrears for October, November, and December 2019. Pursuant to section 72(2) of the Act, I order that the landlord may retain the security deposit in partial satisfaction of this amount.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100 filing fee paid for this application.

In summary, I order that the tenant pay the landlord, \$2,300, as follows:

Rental Arrears	\$2,700
Filing Fee	\$100
Deposit	\$500
Total	\$2,300

Conclusion

I grant an order of possession to the landlord effective January 2, 2019 at 1:00 pm. Should the tenants fail to comply with this order, this order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the Act, I find that the landlord is entitled to a monetary order in the amount of \$2,300. Should the tenants fail to comply with this order, this order may be filed in, and enforced as an order of, the Small Claims Division of the Provincial Court.

I order that the landlord serve a copy of this decision and attached orders upon the tenants immediately upon receipt.

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: December 20, 2019

Residential Tenancy Branch