



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes OPRM, FFL, CNR, MT, RP

Introduction

This was a cross application hearing that dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a Monetary Order for rent, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

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

- cancellation of the 10 day Notice for Unpaid Rent or Utilities (the "Notice"), pursuant to section 46;
- an order to extend the time line for disputing the Notice, pursuant to section 66; and
- an order for regular repairs, pursuant to sections 32 and 62.

I left the teleconference connection open until 9:52 A.M. to enable the tenants to call into this teleconference hearing scheduled for 9:30 AM. The tenants did not attend the hearing. The landlord's representative MS (landlord) 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's representative and I were the only ones who had called into this teleconference.

I accept the landlord's testimony that the tenants were served with the notice of hearing, interim decision and evidence (the Materials) by registered mail on November 19, 2019,

in accordance with section 89 of the Act (tracking numbers recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find the tenants are deemed to have received the Materials on November 24, 2019.

Preliminary Issue – Tenants’ Application

Rules 7.1, 7.2 and 7.3 of the Rules of Procedure provide as follows:

Rule 7 – During the hearing

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.2 Delay in the start of a hearing

In the event of a delay of a start of a conference call hearing, each party must stay available on the line to commence the hearing for 30 minutes after the time scheduled for the start of the hearing.

In the event of a delay of a face-to-face hearing, unless otherwise advised, the parties must remain available to commence the hearing at the hearing location for 30 minutes after the time scheduled for the start of the hearing.

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 re-apply.

Accordingly, in the absence of any attendance at this hearing by the tenants, I order the tenants’ application dismissed without leave to reapply.

Preliminary Issue – Landlord’s Amendment of Claim

At the hearing the landlord’s representative sought to amend his application for \$488.58 in unpaid rent to include an addition \$34.89 for the unpaid balance of rent in December 2019 and January 2020.

The increase in the landlord’s monetary claim for unpaid rent should have been reasonably anticipated by the tenants. Therefore, pursuant to section 4.2 of the Rules and section 64 of the Act, I amend the landlord’s monetary claim for unpaid rent to \$523.47.

Issues to be Decided

Is the landlord entitled to:

- an Order of Possession for non-payment of rent;
- a Monetary Order for unpaid rent in the amount of \$523.47; and
- authorization to recover the filing fee for this application from the tenants?

Background and Evidence

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

The parties entered into a written tenancy agreement on July 01, 2006 which does not specify the amount of rent. The landlord testified since July 01, 2019, monthly rent is \$977.09, due on the first day of the month. The tenancy amendment and security deposit indicate the landlord collected a security deposit of \$375.00 and still holds this money.

The landlord testified on November 4, 2019 he posted the Notice to the tenants' door with an effective date of November 17, 2019. Realtor MC witnessed the service of the Notice to the tenants. When the Notice was issued the tenant was in arrears for \$488.88. Arrears for the month of December 2019 are an extra \$34.96. This application was submitted on November 13, 2019.

The landlord also testified on January 01, 2020 the tenants submitted a payment of \$488.58, and are in arrears for \$488.51 for January 2020 and current total arrears are \$523.47.

The ledger indicates the balance of rent owed on December 02, 2019 was \$34.96.

The landlord also provided use and occupancy only receipts for two payments on November 25, 2019 (\$38.58 and \$450.00), and two payments on December 01, 2019 (\$453.58 and \$488.55).

Analysis

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement.

I find the tenants were duly served with the Notice on November 04, 2019 in accordance with section 88 of the Act. The Notice is valid pursuant to section 52 of the Act. The tenants have not successfully disputed the Notice and are conclusively presumed under sections 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, November 17, 2019.

I accept the landlord's uncontroverted evidence that the tenants owe \$977.09 on the first of each month and are currently in arrears of \$523.47 for December and January.

As explained in section D.2 of Policy Guideline #17, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord. I order the landlord to retain the tenants' security deposit of \$375.00 in partial satisfaction of the unpaid rent.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

In summary:

| | |
|---------------------------------|-----------|
| Monetary claim for unpaid rent | \$523.47 |
| Minus tenants' security deposit | -\$375.00 |
| Landlord's filing fee | \$100.00 |
| Total monetary award | \$248.47 |

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **two days after service of this order** on the tenants. Should the tenants fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the Act, I grant the landlord a Monetary Order in the amount of \$248.47.

The landlord is provided with this order in the above terms and the tenants must be served with **this order** as soon as possible. Should the tenants fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and 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: January 13, 2020

Residential Tenancy Branch