



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

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

- an order of possession for unpaid rent pursuant to section 46 and 55 of the *Act*;

The landlord's daughter GK (agent) and the tenant JH attended representing both the tenants, and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord's agent testified that she served the tenant with the application for dispute resolution via Canada Post registered mail on December 18, 2019. The landlord's agent provided a copy of the registered mail tracking number. The tenant confirmed receipt of the landlord's application for dispute resolution but could not recall the date.

The landlord's agent testified that the Ten-Day Notice to End Tenancy ("Notice") was posted on the door on November 25, 2019 with an effective move out date of December 05, 2019. I find that the both parties were served in accordance with sections, 88 and 89 of the *Act*.

Preliminary issues

At the hearing the tenant testified that they had not paid the rent arrears because there were multiple issues with the rental property including electrical rewiring, leaks and mold. The tenant was advised to contact the Residential Tenancy Branch for further advice on these issues.

At the hearing the landlord sought to further amend his application to include a claim for rent which he testified remains outstanding.

Rule of Procedure 4.2 states:

4.2 Amending an application 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, 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 they first applied for dispute resolution, I find that the increase in the landlord's monetary claim should have been reasonably anticipated by the tenants. Therefore, pursuant to Rule 4.2, I order that the landlord's application be amended to include a claim for December and January 2020.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, I do not reproduce all details of the respective submissions and/or arguments in my decision. I reference only the facts that are relevant to my decision herein.

The landlord's agent submitted a copy of the tenancy agreement which commenced on September 8, 2015 with a monthly rent of \$1300.00. The current monthly rent is \$1435.00 with a security deposit of \$650.00 held in trust by the landlord. The tenants continue to reside in the rental unit.

The landlord's agent testified that they posted the Notice on the tenant's door on November 25, 2019. The landlord provided a copy of the Notice in evidence. The Notice

stated that \$1565.00 was due on November 8, 2019 and remained in arrears. The Notice provided an effective move out date of December 5, 2019.

The tenant agreed that they owed rent for November, December 2019 and January 2020. A partial payment of \$135.00 for September's rent was also outstanding.

Analysis

A tenant must pay rent when it is due under the tenancy agreement and in accordance with the requirements of the *Act*.

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.

(2) A landlord must provide a tenant with a receipt for rent paid in cash.

Pursuant to section 46(4) of the *Act*, a tenant has five days after receipt of a Ten-Day Notice to dispute the Notice or to pay the entire portion of unpaid rent.

Section 46(5) of the *Act* states that "a tenant who does not pay the rent or file an application to dispute a notice to end tenancy for unpaid rent within five days of the service of the notice is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date."

The tenant had five days after the date of service of November 25, 2019 to dispute the notice or the pay the rent in full. In this case, the tenant had until November 30, 2019 to pay the outstanding rent arrears. Since the tenant did not pay the rent or file an application to dispute the landlord's Notice within the five-day deadline, I find that the tenant is conclusively presumed to have accepted that this tenancy ended on the effective date of the Notice. The Notice stated a move out date of December 5, 2019. pursuant to section 46 (5) of the *Act*.

Based on the undisputed testimony of the landlord and the tenancy agreement, I find that the landlord holds a security deposit of \$650.00. I order that the security deposit be applied towards the unpaid rent pursuant to section 72(2)(b) of the *Act*.

Accordingly, I order the tenant to pay the sum of \$3835.00 to the landlord as follows.

ITEM	AMOUNT
Outstanding rent November 2019	\$1565.00
Outstanding rent December 2019	\$1435.00
Outstanding rent January 2020	\$1435.00
Less security deposit	(\$650.00)
Total	\$3835.00

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails 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 **\$ 3835.00** If the tenant fails 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: January 27, 2020

Residential Tenancy Branch