



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) by the landlord to obtain an order of possession for unpaid rent or utilities and based on a mutual agreement, for a monetary order in the amended amount of \$4,000.00 for unpaid rent or utilities, for damages to the unit, site or property, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all or part of the tenant's security deposit, and to recover the cost of the filing fee.

The landlord appeared at the start of teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me. The tenant called into the hearing 20 minutes late just before the hearing concluded at 22 minutes. As a result, the tenant was affirmed. The tenant stated that they thought the hearing started at 10:30 a.m., which was incorrect. The tenant testified that they vacated the rental unit on January 29, 2020, and had advised the landlord, which the landlord vehemently disagreed with. The tenant was advised that the hearing would not start over due to the tenant calling in at the conclusion of the hearing and at 22 minutes, the hearing concluded.

As the tenant called into the hearing late, service of the Notice of a Dispute Resolution Proceeding dated December 20, 2019 (Notice of Hearing), application and documentary evidence was considered. The landlord testified that the tenant was served the Notice of Hearing, documentary evidence and the application by registered mail on December 23, 2019, which was addressed to the rental unit address and in the tenant's name. The agent provided a registered mail tracking number in evidence and a document from the postal tracking website that supports that the tenant signed for the registered mail package on December 27, 2019. The landlord stated that the tenant continues to

occupy the rental unit and refuses to open the door. The registered mail tracking number has been included on the cover page of this decision for ease of reference and is identified as 1. In addition, the landlord testified that they served the tenant with an amendment increase their monetary claim to \$4,000.00, and that the amendment was served by registered mail on January 3, 2020. A second registered mail tracking number was submitted in evidence and has been included on the cover page of this decision for ease of reference and is identified as 2. The landlord confirmed that the address and the name were the same as the first package. The online registered mail tracking website indicates that the tenant failed to pick up the second registered mail package. Documents served by registered mail are deemed served 5 days after they are mailed according to section 90 of the Act. Therefore, I find the tenant was duly served as of January 8, 2020.

Given the above, the hearing continued without the tenant present as they were duly served; however, as noted above, the tenant called in near the conclusion of the hearing and after an order of possession and monetary order had already been granted to the landlord, which I will described further below.

Preliminary and Procedural Matters

The landlord's claim for damages is premature as the tenant has until the end of the tenancy to repair any damages. Further, as the landlord is also applying for an order of possession, I dismiss the claim for damages with leave to reapply as the landlord testified that the tenant continues to occupy the rental unit.

The parties confirmed their email addresses. The parties were advised that the decision will be sent to both parties by email. The landlord will be sent the order of possession and monetary order by email, which must be served on the tenant.

Issues to be Decided

- Is the landlord entitled to an order of possession under the Act?
- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The landlord submitted a copy of the tenancy agreement in evidence. A fixed-term tenancy began on May 19, 2018 and reverted to a month to month tenancy after May 19, 2019. Monthly rent in the amount of \$1,000.00 was due on the first day of each month. A security deposit of \$450.00 was paid by the tenant at the start of the tenancy, which the landlord continues to hold.

The landlord submitted a copy of the 10 Day Notice for Unpaid Rent or Utilities dated December 9, 2019 (10 Day Notice) in evidence. The landlord testified that the 10 Day Notice was personally served on the tenant on December 9, 2019 and was served by the landlord's agent, JT (agent). The effective vacancy date on the 10 Day Notice is not listed. The amount listed as owing is \$1,000.00 due December 1, 2019. The landlord testified that the tenant did not pay the amount owing or dispute the 10 Day Notice.

The landlord is claiming \$3,000.00 in unpaid rent/loss of rent as follows:

1. December 2019 - \$1,000.00 unpaid rent
2. January 2020 - \$1,000 unpaid rent
3. February 2020 - \$1,000.00 unpaid rent/loss of rent

The landlord is seeking to retain the tenant's security deposit towards any amount owing and wants an order of possession as soon as possible.

The tenant claimed that they vacated the rental unit on January 29, 2020, and had advised the landlord, which the landlord stated was not true. Both parties claimed the other was not telling the truth. The tenant provided no documentary evidence to support that rent had been paid for December 2019, January 2020 or February 2020.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of Possession – As the tenant called into the hearing late after my decision had been rendered and has provided no supporting documentary evidence of paying rent, I find that the tenant failed to pay the rent or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice, and that the tenant is conclusively presumed pursuant to section 46 of the Act, to have accepted that the tenancy ended on the corrected effective vacancy date on the 10 Day Notice; which in the matter before me would be

December 19, 2019, as the 10 Day Notice was personally served on December 9, 2019. I amend the effective vacancy date pursuant to section 68(1)(a) and 68(1)(b) of the Act as I find the tenant would know, or ought to have known that 10 days from December 9, 2019, was December 19, 2019, and that by not paying rent, the tenancy end date would be December 19, 2019. Accordingly, I grant the landlord an order of possession effective **two (2) days** after service on the tenant. I find the tenancy ended on December 19, 2019.

Claim for unpaid rent – I accept the undisputed testimony of the landlord that was provided before the tenant called into the hearing late at 20 minutes, that the tenant failed to pay rent in the amount of \$3,000.00 as noted above for the months of December 2019, January 2020 and February 2020. I find the tenant breached section 26 of the Act, which states that a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I prefer the evidence of the landlord over that of the tenant as the tenant provided no proof of payment or sufficient evidence that they have returned the keys to the landlord and have vacated. Therefore, I find the landlord will not regain possession of the unit until after service of the order of possession and has therefore suffered a loss.

I find the landlord has met the burden of proof and has established a monetary claim of **\$3,000.00** comprised of \$1,000.00 in unpaid rent for December 2019, January 2020, and February 2020.

As the landlord has succeeded with their application, I grant the landlord the recovery of the **\$100.00** filing fee pursuant to section 72 of the Act. The tenant's security deposit of \$450.00 has accrued \$0.00 in interest since the start of the tenancy.

Monetary Order – I find that the landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the tenant's security deposit which has accrued no interest as follows:

Unpaid December 2019 rent	\$1,000.00
Unpaid January 2020 rent	\$1,000.00
Unpaid/loss of February 2020 rent	\$1,000.00
Filing fee	\$100.00
Subtotal	\$3,100.00
<i>(Less Tenant's Security Deposit of \$450.00 with \$0.00 in interest)</i>	<i>-\$450.00</i>

TOTAL OWING BY THE TENANT TO LANDLORD	\$2,650.00
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Based on the above, I authorize the landlord to retain the tenant's full \$450.00 security deposit pursuant to section 38 of the Act towards the amount owing. I also grant the landlord a monetary order pursuant to section 67 of the Act in the amount of **\$2,650.00** as indicated above.

Conclusion

I find that the landlord has proven their claim and is, therefore, entitled to an order of possession effective **two (2) days** after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The tenancy ended December 19, 2019.

I find that the landlord has established a total monetary claim of \$3,100.00 as described above. I authorize the landlord to retain the tenant's full security deposit of \$450.00 in partial satisfaction of the claim, and I grant the landlord a monetary order under section 67 of the Act for the balance owing by the tenant to the landlord in the amount of **\$2,650.00**. This order must be served on the tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties. The orders will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 25, 2020

Residential Tenancy Branch