



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPR, MNRL

Introduction

This hearing was scheduled in response to the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for cause pursuant to section 46 and 55 of the *Act*;
- monetary compensation for unpaid rent pursuant to section 67 of the *Act*;
- filing fee pursuant to section 72 of the *Act*.

The landlord KSO attended the hearing via conference call. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions. The tenant did not attend this hearing.

The landlord testified the tenant was served the Notice of Dispute Resolution together with the evidentiary package by attaching to the rental unit on February 23, 2020. I find that this satisfied the service requirements set out in sections 88 and 89 of the *Act*, and find the tenant was deemed to have received the documents in accordance with section 90 of the *Act* on February 26, 2020.

Rule of Procedure 7.3 states:

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. I proceeded with the hearing.

In the original monetary worksheet, the landlord was seeking the sum of \$ 800.00 for the month of January 2020. In the hearing the landlord sought to increase the monetary claim to a total of \$1,600.00 to include the rent for January and February 2020.

Amendment

The Residential Tenancy Branch Rules of Procedure rule 4.2 states that 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 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, I order that the landlord's application be amended to include the rent for January and February 2020.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

This tenancy began on May 1, 2019. The landlord testified that monthly rent in the amount of \$800.00 was payable on the first day of each month. The landlord did not take a security deposit.

The landlord testified the tenant had not paid the full rent for the months of January to February 2020 and that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), dated February 3, 2020 by attaching to the

rental unit door and that this service was witnessed by a third party. The landlord provided a document signed by the landlord and the witness.

The Notice indicates an effective move-out date of February 13, 2020.

The grounds to end the tenancy cited in the Notice were:

- 1) the tenant owes the sum of \$ 800.00 for the month of January 2020.

The tenant did not attend the hearing to present any submissions in relation to the Notice and the tenant did not upload any evidence disputing the landlord's Notice.

Analysis

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Section 46(5) says that if a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

Based on the landlord's testimony and the notice before me, I find that the tenant was served with a valid Notice. The tenant did not pay the rent or file an application to dispute the Notice within 5 days of its receipt. Therefore, the tenant is conclusively presumed pursuant to section 46(4) of the *Act* to have accepted that the tenancy ended on the effective date.

As the tenant has failed to vacate the rental unit, I find that the landlord is entitled to an order of possession, pursuant to section 46 and 55 of the *Act*.

Pursuant to sections 67 of the *Act*, I order that the tenant pay the landlord \$1,600.00 representing the rent owed from January to February 2020.

As the landlord has been successful in this application, I grant the landlord a monetary award of \$100.00 for reimbursement of the filing fee pursuant to section 72 of the *Act*.

Conclusion

I grant a monetary order for the sum of \$1,700.00 for the unpaid rent and \$100.00 filing fee pursuant to section 67 and 72 of the *Act*.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. 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.

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: March 25, 2020

Residential Tenancy Branch