



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The landlords applied for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*; and
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*.

Although I left the teleconference hearing connection open until 1:42 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M., the tenant did not attend this hearing. The landlords JM and CS (“the landlord”) attended the hearing and were 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 and I were the only ones who had called into this teleconference.

I accept the landlords’ testimony that the tenant was served with the Notice of Hearing and evidence (the Materials) by registered mail on January 30, 2020, in accordance with section 89 of the *Act* (the tracking number is reproduced 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 tenant is deemed to have received the Materials on February 04, 2020.

Preliminary Issue – Amendment of Claim

At the hearing the landlords sought to amend his application to include a claim for February and March 2020 rent which he testified remains outstanding. He requested to increase his monetary claim to \$5,700.00.

I find that the increase in the landlords' monetary claim should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules and section 64 of the Act, I order that the landlords' application be amended to include a claim for February and March 2020 rent.

Issues to be Decided

Are the landlords entitled to:

- an Order of Possession for non-payment of rent? and
- a Monetary Order for unpaid rent in the amount of \$5,700.00?

Background and Evidence

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

The landlord testified rent is \$1,800.00 per month, due on the first day of the month. At the outset of the tenancy a security deposit of \$900.00 was collected and the landlord still holds it in trust. The written tenancy agreement was submitted as evidence.

The landlord also testified the 10 day Notice to End Tenancy (the Notice) was served by registered mail on December 30, 2019, with an effective date of January 15, 2020. The tracking number is reproduced on the cover of this decision. The landlord affirmed the tenant confirmed she received the Notice.

The tenant has paid the following amounts since the Notice was issued: \$1,200.00 on February 2020 and \$900.00 on March 2020. The tenant has not vacated the unit. In summary, current arrears are \$5,700.00:

Month	Amount paid \$	Amount owed \$	Balance \$
September 2019	0	1,800.00	1,800.00
October 2019	900.00	1,800.00	2,700.00
November 2019	3,900.00	1,800.00	600.00
December 2019	0	1,800.00	2,400.00
January 2020	0	1,800.00	4,200.00
February 2020	1,200.00	1,800.00	4,800.00
March 2020	900.00	1,800.00	5,700.00

The landlords submitted the Notice and a Monetary Order Worksheet (RTB-37).

Analysis

I have reviewed all the documentary evidence and deem the tenant served with the Notice on January 04, 2020 in accordance with sections 89 (2)(b) and 90(a) of the Act. I find the Notice is valid pursuant to section 52 of the Act. The tenant has not disputed the Notice and is conclusively presumed under sections 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, January 15, 2020.

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

I accept the landlords' uncontroverted evidence the tenant has been in arrears since September 2019 and the total rent amount owing is \$5,700.00 for the balance of December 2019 (\$300.00) and the months of January, February and March 2020 (\$1,800.00 for each month).

As explained in section D.2 of Policy Guideline #17, the Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the

monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord. I order the landlord to retain the tenant's security deposit of \$900.00 in partial satisfaction of the unpaid rent. Thus, the total monetary award is \$4,800.00.

I warn the tenant that she may be liable for any costs the landlords incur to enforce the order of possession.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this order** on the tenant. Should the tenant 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 authorize the landlords to retain the tenant's security deposit of \$900.00 in partial satisfaction of unpaid rent and grant the landlords a monetary order in the amount of \$4,800.00.

The landlords are provided with this order in the above terms and the tenant must be served with **this order** as soon as possible. Should the tenant 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: March 05, 2020

Residential Tenancy Branch