



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 landlord applied for:

- an order of possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*;
- a monetary order for unpaid rent, pursuant to sections 26 and 67 of the *Act*; and

The tenant did not attend this hearing, although I left the connection open until 10:15 A.M. to enable the tenant to call into this teleconference scheduled for 9:30 A.M. The 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 and I were the only ones who had called into this teleconference.

I accept the landlord's testimony that the tenant was served with the notice of hearing and evidence (the Materials) in person on January 10, 2020 at 5:30 P.M. I find the tenant was properly served, in accordance with section 89(2)(a) of the *Act*.

Preliminary Issue – Jurisdiction

Sections 2 and 4(c) of the *Act* provide:

What this Act applies to

2 (1) Despite any other enactment but subject to section 4 [what this Act does not apply to], this Act applies to tenancy agreements, rental units and other residential property.

(2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.

[...]

What this Act does not apply to

4 This Act does not apply to

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

The landlord affirmed the tenancy started on June 01, 2015. On June 27, 2018 the tenant and the landlord signed the tenancy agreement named "Room Rental Agreement" (submitted into evidence). The landlord lives on the main floor of the house and rents the basement unit to the tenant. The basement consists of two bedrooms, a living room, a full bathroom and a kitchen. The main floor has bedrooms, a living room, a kitchen, and full bathroom. There are separate entrances to the basement and to the main floor unit.

From the beginning of the tenancy until March 2019 the landlord was sharing the kitchen with the tenant because the main floor kitchen's oven was not working. The landlord was facing financial hardship and was not able to purchase a new oven until March 2019. As the tenant was sharing the kitchen with the landlord until March 2019, the rental suite was rented for a price below market rate and the tenancy agreement was referred to as "Room Rental Agreement".

The written statement dated November 01, 2019, submitted into evidence by the landlord, is signed by a friend of the tenant. It states:

On numerous occasions I have been at [anonymized] place and not once did the landlord ever [sic] use the washroom or the kitchen but many times when I was leaving I could smell them cooking upstairs. I was probably over there at least 3-4 days a week as she was my best friend.

Based on the undisputed testimony and the above written statement, I find the applicant (landlord) and the respondent (tenant) have not been sharing the kitchen since March 2019. I find the agreement between the parties is a residential tenancy agreement and the Act applies. I therefore have jurisdiction to render a decision in this matter.

Preliminary Issue – Amendment

At the hearing the landlord sought to amend his application for \$775.00 in unpaid rent to include an additional \$3.100.00 for the unpaid rent of December 2019 and January, February and March 2020.

The increase in the landlord's monetary claim for unpaid rent should have been reasonably anticipated by the tenant. 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 \$3.875.00.

Issues to be Decided

- Is the landlord entitled to obtain an order of possession, pursuant to section 46 and 55 of the Act?
- Is the landlord entitled to a monetary order for unpaid rent pursuant to sections 26 and 67 of the Act?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified the monthly rent is \$775.00 due on the first of each month. At the outset of the tenancy a security deposit of \$350.00 was collected and he still holds it in trust. The tenant continues to live in the rental unit.

The landlord submitted a copy of the Notice, dated November 06, 2019, for \$775.00 in unpaid rent due on November 01, 2019. The effective date is November 20, 2019. A Direct Request Worksheet (RTB form 46) was provided. The Notice was posted on the door of the tenant's rental unit on November 06. A witnessed Proof of Service form (RTB-34) was submitted into evidence.

Analysis

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

I find the tenant was deemed served with the Notice on November 09, 2019 in accordance with section 88(g) and 90(c) of the Act. The form and content of 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, November 20, 2019.

I accept the landlord's uncontroverted evidence that the tenant owes \$775.00 on the first of each month and is currently in arrears of \$3,875.00 for November and December 2019, January, February and March 2020.

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 tenant's security deposit of \$350.00 in partial satisfaction of the unpaid rent.

In summary:

Monetary claim for unpaid rent	\$3,875.00
Minus tenants' security deposit	-\$350.00
Total monetary award	\$3,525.00

Conclusion

I grant an Order of Possession to the landlord 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 landlord to retain the security deposit (\$350.00) and grant the landlord a Monetary Order in the amount of \$3,525.00.

The landlord is 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.

I warn the tenant that she may be liable for any costs the landlord incur to enforce the order of possession and monetary award.

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 10, 2020

Residential Tenancy Branch