



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

This hearing originated as a direct request proceeding which was adjourned to a participatory hearing in an Interim Decision dated January 13, 2020. This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:16 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 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.

The landlord testified that he served the tenant with the Interim Decision and Notice of Re-convened Hearing via registered mail on January 16, 2020. The landlord provided the Canada Post registered mail tracking number during the hearing, the tracking number is located on the front page of this decision. The Canada Post tracking website states that the package was delivered on January 17, 2020. I find that the tenant was served with the above package in accordance with section 89 of the *Act*.

Preliminary Issue- Amendment

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the “Rules”) states that 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.

The landlord’s original application claimed unpaid rent in the amount of \$7,000.00. Since filing for dispute resolution, the landlord testified that the amount of rent owed by the tenant has increased to \$13,000.00.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlord filed the application, 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 application to include a monetary claim for all outstanding rent in the amount of \$13,000.00.

Issues to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The

relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began on September 1, 2017 and is currently ongoing. Monthly rent in the amount of \$3,000.00 is payable on the first day of each month. A security deposit of \$900.00 was paid by the tenant to the landlord.

The landlord testified that on December 2, 2019 he personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent with an effective date of December 12, 2019 (the "10 Day Notice"). A witnessed proof of service document stating same was entered into evidence. The 10 Day Notice was entered into evidence and states that tenant failed to pay rent in the amount of \$4,000.00 that was due for the months of November and December 2019.

The landlord provided undisputed testimony that the tenant paid \$2,000.00 of his November 2019's rent and has not paid any rent since then. The landlord testified that the tenant owes \$13,000.00 in unpaid rent.

Analysis

Section 88 of the *Act* states that a 10 Day Notice may be personally served on the tenant. I find that the service of the 10 Day Notice was effected on December 2, 2019, in accordance with section 88 of the *Act*.

Section 46(1) of the *Act* states that 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) of the *Act* states that within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

Section 46(5) of the *Act* states 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

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

Based on the undisputed testimony of the landlord, I find that the tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice.

In this case, this required the tenant to vacate the premises by December 12, 2019, as that has not occurred, I find that the landlords are entitled to a 2-day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$3,000.00 on the first day of each month. Based on the undisputed testimony of the landlord I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlords \$13,000.00 in unpaid rent from November 2019 to March 2020.

As the landlord was successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$900.00 in part satisfaction of his monetary claim for unpaid rent against the tenant.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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.

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
November 2019 rent	\$1,000.00
December 2019 rent	\$3,000.00
January 2020 rent	\$3,000.00
February 2020 rent	\$3,000.00
March 2020 rent	\$3,000.00
Filing Fee	\$100.00
Less security deposit	-\$900.00
TOTAL	\$12,200.00

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.

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 12, 2020

Residential Tenancy Branch