



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

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 section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:42 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Rules 7.1 and 7.3 of the Residential Tenancy Branch Rules of Procedure provides as follows:

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The landlord testified that the Landlord's Application for Dispute Resolution (the Application), along with the notice of this hearing and supporting evidence were sent to the tenant by way of registered mail on January 17, 2020. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the Application, notice of this hearing and evidence on January 22, 2020, the fifth day after their registered mailing.

On February 11, 2020, the landlord submitted a Landlord's Form to Amend a Dispute Resolution Application (the amendment) to the Residential Tenancy Branch (RTB), to request an additional monetary award for unpaid rent owing for February 2020 in the amount of \$2,050.00. The landlord testified that the amendment was provided to the tenant by registered mail on February 11, 2020 and provided a copy of the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the amendment on February 16, 2020, the fifth day after their registered mailing.

Rule 3.14 of the RTB Rules of Procedure (Rules) states that documentary evidence intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. I find the amendment is deemed received by the tenant in accordance with the Rules and I allow the amendment.

At the outset of the hearing the landlord sought to further amend their monetary claim from \$8,200.00 to \$10,250.00 for \$2,050.00 in monthly rent owing for March 2020 that has not been paid while waiting for this hearing with the tenant still in the rental unit.

Residential Tenancy Rule of Procedure 4.2 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. I allow this amendment to the Application as rent for March 2020 was clearly rent that the tenant would have known about and resulted since the landlord submitted their Application.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord gave written evidence that this tenancy began on September 01, 2018, with a monthly rent of \$2,050.00, due on the first day of each month. The landlord confirmed that they currently retain a security deposit in the amount of \$1,025.00.

The landlord gave undisputed affirmed testimony and witnessed documentary evidence that three 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notices), one for November 2019, December 2019 and January 2020, were served through the mail slot of the rental unit on January 01, 2020.

A copy of each signed 10 Day Notice dated January 01, 2020, each identifying \$2,050.00 in unpaid rent owing for this tenancy, each with an effective date of January 11, 2020, were included in the landlord's evidence.

A copy of a Direct Request Worksheet, showing \$6,150.00 in unpaid rent owing for November 2019, December 2019 and January 2020, was also provided.

The landlord testified that the tenant is still in the rental unit and has not paid any amount towards the unpaid rent indicated on the 10 Day Notices or for February 2020 and March 2020 unpaid rent. The landlord submitted that they are seeking an Order of Possession and a monetary award in the amount of \$10,250.00 for the unpaid rent owing for November 2019, December 2019, January 2020, February 2020 and March 2020.

Analysis

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

In accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notices were deemed served to the tenant on January 04, 2020. Based on the landlord's undisputed evidence and testimony, I find the tenant failed to pay the full rent and did not make an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notices. Due to the failure of the tenant to take either of these actions within five days, I find the tenant is conclusively presumed to have accepted the end of this tenancy by January 14, 2020, the corrected effective date on the 10 Day Notice pursuant to sections 46(5) and 53(2) of the *Act*. In this case, the tenant and anyone on the premises were required to vacate the premises by January 14, 2020. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. Based on the landlord's undisputed written evidence and affirmed testimony, I find the landlord is entitled to a monetary award of \$10,250.00 for unpaid rent owing for November 2019, December 2019, January 2020, February 2020 and March 2020.

Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the

tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period. As the landlord has been successful in this application, I allow them to recover their \$100.00 filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) or any occupant on the premises 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 section 67 of the *Act*, I grant a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, to retain the tenant's security deposit and to recover the filing fee for the Application:

Item	Amount
Unpaid November 2019 Rent	\$2,050.00
Unpaid December 2019 Rent	2,050.00
Unpaid January 2020 Rent	2,050.00
Unpaid February 2020 Rent	2,050.00
Unpaid March 2020 Rent	2,050.00
Less Security Deposit	-1,025.00
Filing Fee for this Application	100.00
Total Monetary Order	\$9,325.00

The landlord is provided with this Order in the above terms and the tenant(s) 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 Orders 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 13, 2020

Residential Tenancy Branch