



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0996437 BC Ltd. c/o AWM-Alliance Real Estate Group Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR, OPR-DR

Introduction

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

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

The Property Manager ("the landlord") 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 via Canada Post registered mail on March 28, 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 April 2, 2020. Canada Post tracking number is listed on the first page of this decision.

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.

This hearing was originally scheduled as a Direct Request but was convened to a participatory hearing on the basis that the tenancy agreement did not stipulate the day the rent was due.

Section 13(2)(f)(v) of the Act establishes that a tenancy agreement is required to identify “the day in the month, or in the other period on which the tenancy is based, on which the rent is due.”

The landlord affirmed in testimony that the rent was due on the first of each month.

Amendment

In the original monetary worksheet, the landlord was seeking the sum of \$3,500.00 for arrears up to the month of January 2020. In the hearing the landlord sought to increase the monetary claim to add the owed rent for February, March and April 2020.

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 he 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 February, March and April 2020 for the total sum of \$6,500.00

Issue(s) to be Decided

Is the landlord entitled to an order of possession 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*?

Background and Evidence

This tenancy commenced on December 1, 2018. The landlord testified that monthly rent in the amount of \$1,000.00 was payable on the first day of each month. The landlord testified that the tenant paid a security deposit and pet damage deposit of \$500.00 each at the beginning of the tenancy, which are held in Trust by the landlord.

The landlord affirmed that the tenant was served with a 10 Day Notice to End Tenancy ("Notice") on January 22, 2020 by registered mail.

The Notice indicates an effective move-out date of January 31, 2020.

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

- 1) the tenant owes the sum of \$3,500.00 for unpaid rent up to the month of January 2020.

The landlord testified that the rent owed up to January 2020 was \$3,500.00 and due to the passage of time this amount now includes the months of February, March and April 2020. In the monetary worksheet the landlord claimed the sum of \$3,500.00 The total that the landlord is claiming is now is \$6,500.00

The landlord provided testimony that the additional amount of \$26.00 showing in the ledger for the months of April 2020 was entered in as interest and that amount is now deducted from the statement ledger as owed rent. The correct amount owed is \$6,500.00

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 pays the landlord the sum of \$6,500.00 representing the rent owed up to April 2020.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit and pet damage deposit in the amount of \$1,000 in partial satisfaction of their monetary claim against the tenant.

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

Conclusion

I grant a monetary order for the sum of \$5,600.00 for the unpaid rent, deducting the security deposit and pet damage deposit and including the \$100.00 filing fee pursuant to section 67 and 72 of the *Act*.

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 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.

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: April 27, 2020

Residential Tenancy Branch