



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-DR, OPUM-DR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order of possession for non-payment of rent pursuant to section 55; and
- a monetary order for unpaid rent and utilities in the amount of \$2,276.19 pursuant to section 67;

The matter was commenced by way of a direct request application. It was adjourned to a participatory hearing by the presiding adjudicator in an interim decision dated March 13, 2020.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:50 pm in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. A director of the landlord ("**PG**") 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 PG and I were the only ones who had called into this teleconference.

PG testified that he served the tenant with a copy of the interim decision and all other documents the landlord intended to rely upon at this application on March 20, 2020 by registered mail. He provided the registered mail tracking number for this mailing (reproduced on the cover of this decision. I find that the tenant has been served with the required documents in accordance with the Act.

Preliminary Issue – Amendment to Increase Amount Claimed

At the hearing the landlords sought to further amend the application to include a claim for March and April 2020 rent which remains outstanding.

Rule of Procedure 4.2 states:

4.2 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 the application for dispute resolution was made. 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 a claim for March and April 2020 rent (\$2,000).

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession; and
- 2) a monetary order for \$4,276.19.

Background and Evidence

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

The parties entered into a tenancy agreement starting Jan 1, 2020. Monthly rent is \$1,000 plus utilities and is payable on the first of each month. The tenant paid the landlord a security deposit of \$500, which the landlord continues to hold in trust for the tenant.

PG emailed the tenant a copy of the tenancy agreement for her signature on December 23, 2019, after the tenant had provided him with the security deposit. PG testified that the tenant never returned a signed copy of the agreement.

PG testified that the tenant has not made any rent payment since the start of the tenancy.

The landlord issued a 10 Day Notice to End Tenancy (the “**Notice**”) dated Feb 11, 2020 for \$ 2,000 in unpaid rent due on February 1, 2020 and for \$276.19 in utilities. The Notice has an effective date on February 21, . The landlord entered a copy of the Notice into evidence.

PG testified that the tenant transferred utilities into her name as of January 17, 2020. He submitted BC Hydro bill into evidence for \$457 for the period of November 6, 2019 to January 16, 2020. He testified that the tenant’s share of this (for January 1 to January 16) was \$276.19. He did not explain how he arrived at that amount. I note that the invoice states that for the period of December 6 to January 16:

- a basic charge of \$0.209 per day (\$8.78 over 42 days);
- a charge of \$88.07 for 932 kWh at \$0.0945 per kWh; and
- a charge of \$307.06 for 2,167 kWh at \$0.1417 per kWh; and
- a customer crisis fund charge of \$0.0043 per day (\$0.18 over 42 days).

5% GST was charged on these amounts.

The landlord served the Notice on the tenant by posting it on the door of the rental unit on February 11, 2020.

PG testified that the tenant did not apply to dispute the Notice within five days of service.

PG testified that, to date, the tenant is \$4,000 in rental arrears, representing unpaid rent for the months of January to April 2020. He testified that she

Analysis

I find that the tenant was served with the Notice in accordance with the Act.

Based on the testimony of PG, I find that the tenant was obligated to pay monthly rent in the amount of \$1,000. Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement. I accept the evidence before me that the tenant has failed to pay rental arrears in the amount of \$ 4,000, comprised of the balance of unpaid rent owed by April 1, 2020.

I find that the tenant is obligated to pay the utilities costs for the rental unit. Based on my review of BC Hydro invoice submitted into evidence, I find that the landlord paid \$424.29 for utilities (including GST) for the period of December 6 to January 16, 2020 (42 days). Of these 42 days, the tenant occupied the rental unit 17 days (January 1 to

16, inclusive). Accordingly, the tenant is responsible for 40.5% ($17 \div 42$) of the amount paid by the landlord. I calculate this amount to be \$171.84 ($\$424.29 \times 40.5\%$).

I accept the landlord's undisputed evidence and find that the tenant did not pay the rent or utilities owed in full within the five days granted under section 46 (4) of the Act and did not apply to dispute the Notice within that five-day period.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the corrected effective date of the Notice, February 14, 2020.

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Therefore, I find that the landlord is entitled to an order of possession and a monetary order of \$ 4,171.84 for unpaid rent and utilities owed by April 1, 2020 as claimed by the landlord.

Residential Tenancy (COVID-19) Order, MO M089 (Emergency Program Act) made March 30, 2020 (the "**Emergency Order**") permits an arbitrator to issue an order of possession if the notice to end tenancy the order of possession is based upon was issued prior to March 30, 2020 (as per section 3(2) of the Emergency Order).

However, per section 4(3) of the Emergency Order, a landlord may not file an order of possession at the Supreme Court of BC unless it was granted pursuant to sections 56 (early end to tenancy) or 56.1 of the Act (tenancy frustrated). The order of possession granted above is not issued pursuant to either section 56 or 56.1 of the Act.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit in partial satisfaction of the monetary order made above.

Conclusion

Pursuant to sections 67 of the Act, I order that the tenant pay the landlord \$3,671.84, representing the rental and utilities arrears less the security deposit of \$500.00.

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached orders by the landlord.

I order the landlord to serve the tenant with a copy of this decision and the attached orders immediately upon their receipt from the Residential Tenancy Branch.

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 21, 2020

Residential Tenancy Branch