



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR FFL MNRL

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;
- a monetary order for unpaid rent and utilities in the amount of \$2,804.79 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:46 am in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 am. The landlord's property manager ("**SX**") 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 SX and I were the only ones who had called into this teleconference.

SX testified she served that the tenant with the notice of dispute resolution form and supporting evidence package via registered mail on February 24, 2020. She provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenant was deemed served with this package on February 29, 2020, five days after SX mailed it, in accordance with sections 88, 89, and 90 of the Act.

Preliminary Issue – Amendment to Increase Amount Claimed

At the hearing, SX testified that the tenant paid the arrears on February 24, 2020 but has failed to pay March or April 2020 rent. She sought to further amend the application to include a claim for these outstanding arrears.

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 (\$2,080).

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order for \$2,080; and
- 3) recover their filing fee?

Background and Evidence

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

The parties entered into a written, tenancy agreement starting September 1, 2016. Monthly rent is \$1,040 plus utilities and is payable on the first of each month. The tenant paid the landlord a security deposit of \$500 and a pet damage deposit of \$500, which the landlord continues to hold in trust for the tenant.

SX testified that the tenant did not pay January or February 2020 Rent as of February 1, 2020, nor did he pay the outstanding utilities in the amount of \$524.79. Accordingly, the landlord posted on the rental unit door a 10 Day Notice to End Tenancy (the "**Notice**") on February 10, 2020. The Notice specified an effective date of February 25, 2020.

The tenant did not apply to dispute the Notice and did not pay the full amount owed with five days of being served the Notice. SX testified he paid the full amount owed on February 26, 2020.

As stated above, SX testified that the tenant has not paid any part of the monthly rent for March or April 2020, even though he continues to reside at the rental unit.

Analysis

In accordance with sections 88 and 90 of the Act, I find that the tenant is deemed to have been served with the Notice on February 13, 2020.

Section 46 of the Act states:

Landlord's notice: non-payment of rent

46 (1) 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.

[...]

(4) 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.

(5) 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 testimony of SX, I find that the tenant did not pay the full amount owed within five days of being deemed served with the Notice (February 18, 2020).

Accordingly, as per section 46(5)(a), the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice (February 25, 2020).

Accordingly, I grant the landlord an order of possession against the tenant effective two days after service of this order by the landlord on the tenant.

I accept SX's testimony that the tenant has failed to pay March or April 2020 rent, in the amount of \$2080.

Accordingly, I grant a monetary order to the landlord in the amount of \$2,080.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, it may recover its filing fee from the tenant.

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

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.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$1,180, representing the following:

Rent arrears	\$2,080.00
Filing Fee	\$100.00
Credit for Deposits	-\$1,000.00
Total	\$1,180.00

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 order(s) by the landlord.

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 24, 2020

Residential Tenancy Branch