Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, 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 non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of $3,330 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This matter was commenced by direct request but was referred to a participatory hearing by the presiding adjudicator in an interim decision dated March 4, 2020.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:44 am in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 am. Two representatives of the landlord attended the hearing (the building manager "**ID**" and an agent "**VW**") who were 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 ID, VW, and I were the only ones who had called into this teleconference.
ID testified that she served the tenant with the application materials, a copy of the notice of reconvened hearing, and a copy of the interim decision by posting it in the mail slot on the door of the rental unit on March 19, 2020. I find that the tenant is deemed served with this package on March 22, 2020, three days after ID delivered it, in accordance with sections 88, 89, and 90 of the Act.

Preliminary Issue- Identity of Tenant

This matter was referred to a participatory hearing due to a discrepancy between the tenant's name on the tenancy agreement and on the Notice.

The tenancy agreement identifies the tenant by his full first name (reproduced on the cover of this decision). The Notice, the application for direct request, and the supporting documents, refer to the tenant by a shortened version of this name, which may also be a shortened version of another name.

ID and VW testified that the tenant refers to himself by the shortened version of the name used on the tenancy agreement, which is why they used this name on the Notice, the application, and other documents. They testified that the individual named on the tenancy agreement is the same individual whom the landlord is seeking the order against in this application.

Accordingly, I find it appropriate to amend the tenant's name in application to indicate that the tenant is also known as an individual with the full first name.

Preliminary Issue – Amendment to Increase Amount Claimed

At the hearing the landlord 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 rent, plus the late fees for these months ($3,330).

Issues to be Decided

Is the landlord entitled to:

1) an order of possession;

2) a monetary order for $6,660; and
3) recover their filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord's representatives, not all details of their 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, 2017. Monthly rent is $1,640 and is payable on the first of each month. The tenancy agreement includes a clause permitting the landlord to charge a late rent fee of a maximum of $25 per month. The tenant paid the landlord a security deposit of $750, which the landlord continues to hold in trust for the tenant.

ID testified that the tenant has not paid any rent for months of January, February, March or April in the amount of $6,560.

The landlord served a 10 Day Notice to End Tenancy (the "**Notice**") dated January 31, 2020 by placing it in the mail slot of the door of the rental unit. The Notice has an effective date on February 11, 2020. The landlord entered a copy of the Notice into evidence.

The tenant did not apply to dispute the Notice within five days of service.

Analysis

I find that the tenant was served with the Notice in accordance with the Act, and is deemed served with it on February 3, 2020, three days after it was placed in the tenant's mail slot.

I find the tenant is obligated to pay month rent in the amount of $1,640, pursuant to the tenancy agreement. 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 $ 6,560, comprised of the balance of unpaid rent owed for the months of January, February, March, and April 2020.

I find that the tenancy agreement permits the landlord to charge the tenant up to $25 per month in late fees. I find that the tenant owes $100 in late fees for unpaid rent.

I find that the tenant did not dispute the Notice or pay any portion of the rental arrears within five days of being served with the Notice, or at all.
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 13, 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 $ 6,660 for unpaid rent and late fee as claimed by the landlord.

As the landlord was successful in this application, I find that the landlord is entitled to recover the $100 filing fee paid for this application.

Pursuant to section 72(2) of the Act, I find the landlord may retain the security deposit of $750 in partial satisfaction of the amount owed by the tenant.

Conclusion

I order that the tenant pay the landlord $ 6,010, representing the following:

Outstanding rent and late fees	$6,660
Credit for retaining security deposit	-$750
Filing Fee	$100
Total	**$6,010**

Should the tenant fail to comply with this order, this order may be filed in, and enforced as an order of, the Small Claims Division of the Provincial Court.

I order that the tenant provide the landlord with vacant possession of the rental unit within two days after service of this order on the tenant. Should the tenant fail to comply with this order, this order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

The landlord is provided with these orders in the above terms and must serve the tenant with these orders as soon as possible.

I note that *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.

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