



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNRL-S OPR**

Introduction

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

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for \$3,600 for non-payment of rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing. The landlord's common-law partner also attended the hearing but did not participate.

The landlord testified that he served the tenant with the notice of dispute resolution proceeding form and copies of the supporting evidence he submitted to the Residential Tenancy Branch, with the exception of copies of his bank statements. The tenant confirmed receipt of these documents. The tenant did not submit any documentary evidence of his own.

The landlord testified that he did not provide the tenant with copies of his bank statements because of privacy concerns. Rule 3.14 requires that an applicant serve the respondent with copies of all documents intended to be relied on at the hearing no later than 14 days prior to the hearing. The landlord did not do this. Accordingly, I do not admit his bank statements into evidence.

Preliminary Issue – Amendment

At the hearing the landlord sought to further amend application to include a claim for February and March 2020 rent which he testified 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 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 a claim for February and March 2020 rent (an additional \$2,400).

Issue(s) to be Decided

Is the landlord entitled to:

- A monetary order for unpaid rent in the amount of \$ \$6,000 representing compensation for unpaid rent for November 2019 to March 2020?
- Apply the security deposit against any monetary order made at this hearing?
- Recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of the 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 an oral tenancy agreement starting July 1, 2017. Monthly rent is \$1,200 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$600. The landlord still retains this deposit.

The landlord testified that the tenant did not pay rent for the months of November and December 2019, and January, February, and March 2020. In total, the landlord testified the tenant is in arrears of \$6,000.

The landlord testified that the tenant has been “one month behind” in his rent payments since April 2019. He submitted copies of e-transfer emails from the tenant showing all rent payments since March 28, 2019. Based on these emails, and the fact that \$1,200 in rent is owed on the first of each month, the tenant’s arrears are as follows:

Date	Description	Owing	Paid	Rent Balance
28-Mar-19	Payment	-	-\$1,200	-\$1,200
01-Apr-19	Rent Due	\$1,200	-	\$0
01-May-19	Rent Due	\$1,200	-	\$1,200
01-Jun-19	Rent Due	\$1,200	-	\$2,400
25-Jun-19	Payment	-	-\$1,200	\$1,200
01-Jul-19	Rent Due	\$1,200	-	\$2,400
01-Aug-19	Rent Due	\$1,200	-	\$3,600
01-Aug-19	Payment	-	-\$1,200	\$2,400
31-Aug-19	Payment	-	-\$1,200	\$1,200
01-Sep-19	Rent Due	\$1,200	-	\$2,400
28-Sep-19	Payment	-	-\$1,200	\$1,200
01-Oct-19	Rent Due	\$1,200	-	\$2,400
31-Oct-19	Payment	-	-\$1,200	\$1,200
01-Nov-19	Rent Due	\$1,200	-	\$2,400
29-Nov-19	Payment	-	-\$1,200	\$1,200
01-Dec-19	Rent Due	\$1,200	-	\$2,400
01-Jan-20	Rent Due	\$1,200	-	\$3,600
01-Feb-20	Rent Due	\$1,200	-	\$4,800
01-Mar-20	Rent Due	\$1,200	-	\$6,000
			Total	\$6,000

The landlord served the tenant in person with a 10 Day Notice to End Tenancy (the “**Notice**”) dated January 5, 2020 for \$3,600 in unpaid rent due on January 1, 2020. The Notice has an effective date on January 16, 2019. The landlord entered a copy of the Notice into evidence.

The tenant testified that has not made any rent payment for the months of January, February or March 2020, and that he is not sure what his arrears were in 2019. He testified that he never received receipts from the landlord for his rent payments (which he testified he made by e-transfer). He testified that he would have to consult his bank

records to be able to say when he made payments. The tenant did *not* allege that the landlord had failed to produce any copies of e-transfer emails showing rent payment for the last year.

The tenant testified that he did not apply to dispute the Notice within five days of being served it, or at all.

Analysis

I find that the tenant was served with the Notice on January 5, 2020.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,200. 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 \$6,000, comprised of the balance of unpaid rent owed by March 1, 2020.

I find that the tenant did not pay the rent owed in full within the five days after being served with the Notice, 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 effective date of the Notice, January 16, 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 \$ 6,000 for unpaid rent owed by March 1, 2020 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 is entitled to retain the security deposit of \$600 in partial satisfaction of the amount owed for unpaid rent by the tenant.

Conclusion

I order that the tenant pay the landlord \$5,500, representing the following:

Rental Arrears	\$6,000
Credit for retaining security deposit	-\$600
Filing Fee	\$100
Total	\$5,500

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.

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 suspension of enforcement of orders of possession does not relieve the tenant from paying monthly rent. Rent continues to be due and payable in accordance with the tenancy agreement.

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 2, 2020

Residential Tenancy Branch