



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR

Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request that was made on January 10, 2020 and adjourned to a participatory hearing. This hearing was convened pursuant to the Landlord's Application seeking the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent;
- a monetary order for unpaid rent; and
- the return of the filing fee.

The hearing was scheduled for 11:00 AM on April, 6, 2020 as a teleconference hearing. The Landlord appeared at the appointed date and time of the hearing and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 22 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord and I were the only persons who had called into this teleconference.

The Landlord testified the Application and documentary evidence package were served in person on February 3, 2020 to an adult that appears to reside with the Tenant. Based on the oral and written submissions of the Landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application, amendment, and documentary evidence on February 3, 2020.

The Landlord was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However,

only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?
2. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord stated that the tenancy began on February 1, 2016. The Landlord stated that the tenancy agreement was between him and the Tenant D.E. The Landlord stated that during the tenancy, D.E. had her partner D.B. move into the rental unit. The Landlord stated that in October 2019, D.E. vacated the rental unit and that D.B. asked to continue the tenancy. The Landlord stated that he and D.B. verbally agreed to continue the tenancy. The Landlord stated that he and D.B. agreed that D.B. would be required to pay rent in the amount of \$1,500.00 to the Landlord on the first day of each month. The Landlord stated that he had reduced the rent for D.B. which had previously been \$1,580.00. The Landlord stated that D.B. paid a security deposit of \$750.00 and a pet damage deposit in the amount of \$750.00, for a total of \$1,500.00 currently being held by the Landlord. The Landlord stated that D.B. continues to occupy the rental unit.

The Landlord testified that D.B. did not pay rent when due November, December 2019, and January 2020. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 2, 2020 (the "10 Day Notice") with an effective vacancy date of January 13, 2020. At that time, rent in the amount of \$4,500.00 was outstanding. The Landlord testified he served the 10 Day Notice to D.B. in person on January 2, 2020.

The Landlord stated that D.B. paid rent in the amount of \$3,000.00 sometime in January 2020, for the month of November and December 2019. The Landlord stated that D.B. failed to pay the remaining \$1,500.00 as indicated on the 10 Day Notice. In addition, the Landlord testified that D.B. has also failed to pay rent when due for February, March

and April 2020. The Landlord stated that currently, rent in the amount of \$6,000.00 is outstanding, and D.B. continues to occupy the rental unit.

The Landlord stated that he and D.B. had a verbal agreement that the rent would increase to \$1,580.00 as of February 2020. As such, the Landlord is claiming a further \$240.00 for unpaid rent in relation to the rent being increased for February March and April 2020. The Landlord did not provide any evidence in support of this agreement.

As noted above, the Tenants did not attend the hearing to dispute the Landlord's evidence.

Analysis

Based on the uncontested affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the Act, the regulations, or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

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.

The Landlord served D.B. in person with a the 10 Day Notice dated January 2, 2020 with an effective vacancy date of January 13, 2020, on January 2, 2020. Pursuant to sections 88 and 90 of the Act, documents served in this manner are deemed to be received o the same date. I find that D.B. is deemed to have received the 10 Day Notice on January 2, 2020.

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. Therefore, D.B. had until January 7, 2020 to either pay the outstanding rent owed to the Landlord in full, or make an Application for dispute resolution.

I accept that the Landlord received \$3,000.00 of the \$4,500.00 of unpaid rent as indicated on the 10 Day Notice. As D.B. did not pay all the rent owed according to the 10 Day Notice within 5 days and there is no evidence before me that the D.B. disputed

the 10 Day Notice, I find that D.B. is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice, January 13, 2020, pursuant to section 46(5) of the *Act*.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenants, pursuant to section 55 of the *Act*. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

The Landlord stated that D.B. did not pay rent for the month of January, February, March, and April 2020. The Landlord stated that the parties had verbally agreed that the rent would be increased to \$1,580.00 as of February 1, 2020. In this case, I find that the Landlord has provided insufficient evidence that the parties agreed to the rent being increased in accordance with the *Act*. As such, I find that the Landlord is not entitled to a monetary order in accordance with the rent increase.

I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$6,000.00 for the months of January, February, March and April 2020. I find it appropriate in the circumstances to order that the Landlord is entitled to retain the security deposit and pet damage deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$4,500.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$6,000.00
<i>LESS</i> security/pet damage deposit:	-\$1,500.00
TOTAL:	\$4,500.00

Conclusion

The Tenant has breached the *Act* by not paying rent when due to the Landlord. The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. If the Tenant fails to comply with the order of possession it may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$4,500.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 06, 2020

Residential Tenancy Branch