



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on January 27, 2020, wherein the Landlord sought an Order of Possession and Monetary compensation based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on January 6, 2020 (the "Notice") as well as recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for teleconference at 11:00 a.m. on April 9, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed that the Tenant vacated the rental unit as of February 7, 2020 such that the Landlord's claim for an Order of Possession was no longer required.

The parties also confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant for unpaid rent?
2. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that the tenancy began February 1, 2019. Monthly rent was \$1,691.25.

The Landlord issued a 2 Month Notice to End Tenancy on December 5, 2019. The effective date of the Notice was January 31, 2020.

The Landlord stated that she found out that the Tenant had moved out of the rental property at a prior hearing before the Residential Tenancy Branch on February 7, 2020 (the file number for that matter is included on the unpublished cover page of this my Decision); notably I was the Arbitrator at that hearing). The Landlord confirmed that he son moved into the rental unit on February 23, 2020 and pays her rent the amount of \$1,200.00 per month.

A copy of the Notice was provided in evidence and which indicated that the sum of \$1,691.25 was outstanding for rent as of January 1, 2020. The Notice further indicated that the sum of \$151.59 was outstanding for utilities. A Proof of Service was also provided in evidence which confirmed the Notice was served on the Tenant on January 6, 2020 by posting to the door. At the hearing before me the Landlord confirmed she sought the sum of \$1,691.25 for unpaid rent for February 2020, as well as the sum of \$151.59 for unpaid utilities.

The Tenant responded to the Landlord's submissions as follows. The Tenant confirmed that he did not inform the Landlord as to when he was moving out of the rental unit until February 7, 2020, the date of their previous hearing.

In terms of the Landlord's claim for unpaid utilities, the Tenant noted that the Landlord is claiming \$151.59 for the Fortis bill, which is the full amount of the bill; the Tenant stated

that he is only responsible for 35% of that amount as per his residential tenancy agreement (a copy of which was provided in evidence).

In reply to the Tenant's testimony the Landlord confirmed that she did not provide copies of the actual utility accounts, but that the Tenant's 35% share of all the utilities was \$151.59.

Analysis

The Landlord seeks monetary compensation for unpaid rent for the month of February 2020 on the basis that she was unaware the Tenant had vacated the rental unit until February 7, 2020. The Tenant conceded that he did not inform the Landlord he had moved until the February 7, 2020 hearing before the Residential Tenancy Branch.

The Landlord issued a 2 Month Notice to End Tenancy pursuant to section 49. A Tenant who receives such a Notice is entitled to a free months' rent. The parties agreed the Tenant received January 2020 as his free month.

The Tenant did not vacate the rental unit until February 7, 2020. The Landlord seeks monetary compensation for unpaid rent for the month of February 2020.

Section 50 of the *Act* allows a Tenant to end their tenancy earlier than the effective date of a 2 Month Notice issued pursuant to section 49 and reads as follows:

50 (1)If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by

(a)giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

(b)paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2)If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3)A notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*].

In the case before me the Tenant confirmed he did not give the Landlord written notice to end his tenancy early. The parties agreed the Landlord was made aware the Tenant had vacated the rental unit on February 7, 2020.

In tenant's Applications for return of their security deposit, Arbitrators will use the date of a hearing to find that a Tenant has given the Landlord their forwarding address pursuant to section 38 of the *Act*. I find similar reasoning can apply to written notice pursuant to section 50(1)(a); in this case, I find the Tenant gave notice to end his tenancy early on February 7, 2020. As such, and pursuant to section 50(1)(a) I find his tenancy ended 10 days later, on February 17, 2020.

I therefore find, pursuant to section 50(1)(b) that the Tenant is responsible for paying for rent for the February 1-17, 2020 time period. As February 2020 had 29 days, the per diem rate is \$58.32 ($\$1,691.25$ (monthly rent) / 29 days = \$58.32 for day). I therefore find the Landlord is entitled to the sum of \$991.42 for the time period February 1-17, 2020.

Although not specifically requested on her Application, the Landlord also sought \$151.59 in monetary compensation for unpaid utilities. This sum was noted on the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities as well as the Landlord's Direct Request Worksheet.

The evidence before me is that the Fortis utility bill was \$151.59. The Tenant aptly noted that he was only obligated to pay 35% of the utilities pursuant to his tenancy agreement. I do not accept the Landlord's testimony that his 35% of all utilities equalled \$151.59; rather, I find it more likely the Landlord attempted to obtain compensation for the full amount of the Fortis bill.

I therefore award the Landlord the sum of \$53.06, representing 35% of the \$151.59 claimed for outstanding utilities.

As the Landlord has enjoyed limited success, I decline her request for recovery of the filing fee.

Conclusion

The Tenant vacated the rental unit such that an Order of Possession was not required. This claim is therefore dismissed without leave to reapply.

The Landlord is entitled to monetary compensation in the amount of **\$1,044.48** for the following:

Unpaid rent for February 1-17 2020	\$991.42
35% of \$151.59	\$53.06
TOTAL AWARDED	\$1,044.48

In furtherance of the above, the Landlord is entitled to a Monetary Order for the balance due. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

As discussed during the hearing, *Ministerial Order M089* issued March 30, 2020, pursuant to the State of Emergency declared on March 18, 2020, prohibits the enforcement of certain Residential Tenancy Branch orders made during the state of emergency. Enforcement of other Residential Tenancy Branch orders may be affected by the suspension of regular court operations of the BC Supreme Court and Provincial Court.

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 09, 2020

Residential Tenancy Branch