



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR FFL

Introduction

This matter originally proceeded by way of Direct Request proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the Act) and dealt with an Application for Dispute Resolution (application) by the landlord for an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 20, 2020 (10 Day Notice), for a monetary order for unpaid rent and to recover the cost of the filing fee. On February 10, 2020, an adjudicator adjourned the matter to a participatory hearing which was held on this date, Monday April 20, 2020 at 9:30 a.m. Pacific Time. An Interim Decision dated February 10, 2020 was issued, which should be read in conjunction with this decision.

On April 20, 2020, the landlord attended the participatory hearing and was affirmed. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated February 10, 2020 (Notice of Hearing), application and documentary evidence were considered. The landlord testified that the Notice of Hearing, application and documentary evidence were served on the tenant by personal service on or about February 10, 2020 and that the tenant accepted all of the paperwork. Based on the above and without any evidence before me to prove to the contrary, I accept that the tenant was personally served with the Notice of Hearing, application and documentary evidence on February 10, 2020, as claimed by the landlord. Give the above, I find this matter to be undisputed by the tenant.

Preliminary and Procedural Matters

The landlord testified that in addition to the rent owed in the original claim for December 2019 and January 2020, the tenant has subsequently not paid the rent for February, March or April of 2020. As a result, the landlord requested to amend the application to include rent owed for February, March and April of 2020. The landlord also stated that as far as they know the tenant continues to occupy the rental unit. I find that this request to amend the application does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, I amend the application pursuant to section 64(3)(c) of the Act, from \$3,000.00 to \$7,500.00, which consists of \$1,500.00 in unpaid rent for December 2019, and January through April 2020, inclusive. The landlord also made a verbal request to offset any amount claimed with the tenant's \$750.00 security deposit.

Secondly, the landlord confirmed that they do not use email and that they do not have an email address for the tenant. The landlord confirmed their understanding that the decision and any related orders will be sent by regular mail to the landlord. The decision will also be sent by regular mail to the tenant.

Issues to be Decided

- Is the landlord entitled to an order of possession under the Act?
- Is the landlord entitled to a monetary order for unpaid rent or loss of rent under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenant agreement was submitted in evidence. A month to month tenancy began on November 1, 2019. Monthly rent in the amount \$1,500.00 is due on the first day of each month and that the tenant paid a \$750.00 security deposit at the start of the tenancy, which the landlord continues to hold.

The landlord applied for dispute resolution on February 6, 2020. The landlord testified that the 10 Day Notice was served personally on the tenant at the rental unit on January 20, 2020 and that the tenant accepted the paperwork. The 10 Day Notice indicates that \$3,000.00 was owed in rent as of January 1, 2020. The landlord stated that as far as

they know the tenant continues to occupy the rental unit and owes \$1,500.00 for each of the following months:

1. December 2019
2. January 2020
3. February 2020
4. March 2020
5. April 2020

The landlord testified that the tenant did not dispute the 10 Day Notice or pay the rent owing. The effective vacancy date listed on the 10 Day Notice was February 6, 2020, which has passed.

The landlord is seeking an order of possession, a monetary order for unpaid rent, to retain the tenant's security deposit towards rent owing, and to recover the cost of the filing fee.

Analysis

Based on the undisputed documentary evidence and undisputed testimony provided by the landlord during the hearing, and on the balance of probabilities, I find the following.

Order of possession – I accept the landlord's undisputed testimony and I find that the tenant failed to pay any of the amount claimed by the landlord as owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice on January 20, 2020. The effective vacancy date of the Notice is listed as February 6, 2020, which is more than 10 days after the 10 Day Notice was served personally. I find the tenant is conclusively presumed pursuant to section 46 of the Act, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice, which was February 6, 2020. To the best of the landlord's knowledge, the tenant continues to occupy the rental unit. Therefore, **I grant** the landlord an order of possession effective **five (5) days** after service on the tenant. I have used 5 days instead of 2, due to the current State of Emergency related to COVID-19 and *Ministerial Order M089*.

I find the tenancy ended on February 6, 2020 and that the tenant has overheld the rental unit since that date.

Claim for unpaid rent and loss of rent – Firstly, as the tenant was served and did not attend the hearing, I find the application of the landlord to be unopposed by the tenant. I accept the disputed testimony of the landlord that the tenant owes rent as follows:

ITEM DESCRIPTION	AMOUNT OWED
1. December 2019 unpaid rent	\$1,500.00
2. January 2020 unpaid rent	\$1,500.00
3. February 2020 unpaid rent	\$1,500.00
4. March 2020 loss of rent	\$1,500.00
5. April 2020 loss of rent	\$1,500.00
TOTAL	\$7,500.00

Pursuant to section 26 of the Act, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has breached section 26 of the Act by failing to comply with a standard term of the tenancy agreement, which stipulates that rent is due monthly on the first day of each month. I find the landlord has met the burden of proof and has established a monetary claim of **\$7,500.00** as indicated above.

As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00**, pursuant to section 72 of the Act.

The landlord is holding a security deposit of \$750.00, which was paid by the tenant at the start of the tenancy and has accrued no interest since the start of the tenancy.

Monetary Order – I find that the landlord is entitled to a monetary order and that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the tenant's security deposit plus interest as follows:

Rent owing and loss of rent owing by tenant as claimed	\$7,500.00
Filing fee	\$100.00
Subtotal	\$7,600.00
<i>(Less tenant's security deposit including \$0.00 interest)</i>	<i>-(\$750.00)</i>
TOTAL BALANCE OWING BY TENANT TO LANDLORD	\$6,850.00

Pursuant to section 38 and 67 of the Act, I grant the landlord authorization to retain the tenant's full \$750.00 security deposit towards the amount owing as described above. I grant the landlord a monetary order pursuant to section 67 of the Act in the amount of **\$6,850.00** owing by the tenant to the landlord.

Conclusion

The landlord's application is fully successful.

The landlord has been granted an order of possession effective five (5) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia. The tenancy ended on February 6, 2020.

The landlord has established a total monetary claim of \$7,600.00 as indicated above. The landlord is authorized to retain the tenant's full security deposit of \$750.00 in partial satisfaction of the landlord's monetary claim. The landlord is granted a monetary order under section 67 of the Act for the balance owing by the tenant to the landlord in the amount of \$6,850.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The decision and orders will be emailed to the landlord for service on the tenant. The tenant will be sent the decision by regular mail as indicated above.

The link to *Ministerial Order M089* can be found at:

http://www.bclaws.ca/civix/document/id/mo/mo/2020_m089

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 22, 2020

Residential Tenancy Branch