



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction and Background

In this dispute, the landlords sought the following relief under the *Residential Tenancy Act* (the “Act”):

1. an order of possession for unpaid rent, pursuant to section 55 of the Act;
2. a monetary order for unpaid rent, pursuant to section 26 and 67 of the Act; and,
3. recovery of the application filing fee pursuant to section 72 of the Act.

The landlords applied for dispute resolution on December 20, 2019. A dispute resolution hearing was then held on March 3, 2020, from which resulted an arbitrator’s decision granting the landlords an order of possession and a monetary order. The tenant filed an application for review consideration on March 5, 2020, from which a review consideration decision of March 9, 2020 suspended the decision and orders of March 3, 2020, and for which today’s review hearing was convened. The original decision of March 3, 2020 is hereby set aside (based on some variances made in this decision) and is replaced with this decision dated April 21, 2020.

It should be noted that on page 5 of the review consideration decision (which was sent to the tenant, the applicant for review consideration), it states:

Notices of the time and date of the participatory Review Hearing are included with this Review Consideration Decision. Within 3 days of receipt of this Decision the tenant MUST serve upon the landlord the enclosed Notice along with a copy of this Decision. At the new hearing, the review applicant will be required to demonstrate how the documents outlined above have been served to the other party.

The tenant did not attend today's hearing, and the landlords' agent (the "agent"), who did attend, testified that the tenant failed to provide a copy of either the review consideration decision, the notice of dispute resolution, or any evidence in advance of the hearing. He added that he only became aware of the hearing because the Residential Tenancy Branch sent him an e-mail notification. Finally, I note that the tenant did not provide copies of any proof of having served the landlords as was required by the review consideration decision, nor did he provide any evidence.

I have only considered evidence that was submitted in compliance with the *Rules of Procedure*, to which I was referred, and which was relevant to the issues of this application. As such, not all of the parties' testimony may necessarily be reproduced below.

Issues

Whether the landlords are entitled to any or all of the following:

1. an order of possession for unpaid rent, pursuant to section 55 of the Act;
2. a monetary order for unpaid rent, pursuant to section 26 and 67 of the Act; and,
3. recovery of the application filing fee pursuant to section 72 of the Act.

Background and Evidence

The agent testified that the tenancy began on July 27, 2019 and monthly rent, which is due on the first of the month, is \$1,200.00. The tenant (originally there were two tenants, but one of them left, and is not a party to this action) paid a security deposit of \$600.00 and a pet damage deposit of \$500.00. A copy of the written tenancy agreement was submitted into evidence.

On December 1, 2019, the agent served a 10 Day Notice to End Tenancy for Unpaid Rent by leaving the notice at the rental unit with the tenant's mother (an adult), who was then residing with the tenant. The agent testified that he knew that she was residing with the son because (1) he received text messages from the mother indicating that she had moved into the rental unit with her son, (2) the mother had requested (or was provided) with an application for tenancy based on the belief that the mother was intending to become a tenant, and (3) text messages from the tenant who indicated that his mother would be moving in.

Copies of the above-noted text messages were submitted into evidence, along with a copy of the 10 Day Notice.

The agent testified that as of today's date (April 21, 2020), the tenant is in rent arrears totalling \$6,000.00.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Claim for Unpaid Rent and Application Filing Fee

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Pursuant to section 46 of the Act, the 10 Day Notice informed the tenant that the notice would be cancelled if he paid rent within five days of service. The notice also explains that the tenant had five days from the date of service to dispute the notice by filing an Application for Dispute Resolution. He failed to do either.

The landlords' agent testified, and provided documentary evidence to support their submission, that the tenant did not pay rent when it was due and has not paid rent for most of the months since December 2019, for a total of \$6,000. Further, there is no evidence before me that the tenant had a right under the Act to deduct some or all of the rent, and, insufficient evidence indicating that they applied to cancel the Notice.

Section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving their claim for compensation in the amount of \$6,000.00.

Finally, section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the applicants were successful, I grant their claim for reimbursement of the filing fee in the amount of \$100.00.

A total monetary award of \$6,100.00, and a monetary order of \$5,000.00, for the landlords is calculated as follows:

CLAIM	AMOUNT
Unpaid rent	\$6,000.00
Filing fee	\$100.00
LESS security and pet damage deposits	(\$1,100.00)
Total:	\$5,000.00

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I order that the landlords may retain the tenant’s security and pet damage deposits of \$1,100.00 in partial satisfaction of the above-noted award.

The original monetary order dated March 3, 2020 is varied, and as such is replaced by this new monetary order, which is issued in conjunction with this decision.

Claim for Order of Possession

Subsection 55(2)(c) of the Act states that a landlord may request an order of possession of a rental unit when a notice to end the tenancy has been given by the landlord, and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Applying section 55 of the Act to the unchallenged testimony regarding the tenant’s failure to pay rent, and, regarding the tenant’s failure to apply for dispute resolution, pursuant to sections 46 and 55 of the Act, I hereby confirm the original order of possession issued on March 3, 2020.

It should be noted, however, that most orders of possession (with the exception of those issued under sections 56 and 56.1 of the Act) are not enforceable during the current provincial state of emergency, as per Ministerial Order No. M089, [Residential Tenancy \(COVID-19\) Order](#), MO 73/2020.

Conclusion

I hereby confirm the original order of possession dated March 3, 2020.

I hereby vary, and set aside, the monetary order dated March 3, 2020, and, issue a new monetary order in the amount of \$5,000.00, which must be served on the tenant. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

I hereby order that the landlords retain the tenant's security and pet damage deposits in the amount of \$1,100.00.

This decision is final and binding, except where permitted by law, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: April 21, 2020

Residential Tenancy Branch