



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Maple Leaf Property
Management and [tenant name suppressed to
protect privacy]

DECISION

Dispute Codes

OPN, MNRL-S, FFL

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order for possession under a Tenant Notice to End Tenancy (“Tenant’s Notice”) pursuant to sections 45 and 55;
- Authorization to recover the filing fee for this application pursuant to section 72.

I conducted this hearing by teleconference. The landlord’s agent CS appeared for the landlord (“the landlord”). The landlord provided affirmed testimony. The landlord made submissions as well as presented oral and written evidence.

The tenants did not attend the hearing (“the tenant”). I kept the teleconference line open from the time the hearing was scheduled for 12 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant had been provided.

The landlord testified the landlord served each tenant with the Application for Dispute Resolution and supporting documents pursuant to section 89 of the *Act* by separate

registered mail sent on March 27, 2020. The landlord provided the Canada Post tracking numbers for the registered mail referenced on the first page of this decision. Pursuant to sections 89 and 90, I find the landlord served each tenant on April 1, 2020 the 5th day after mailing.

The landlord clarified that the landlord purchased the building in which the unit is located, a building with 87 units, on February 7, 2020. The landlord filed a copy of a letter in support of the change of name of the landlord effective that date, a copy of the letter having been sent to the tenant.

Preliminary Issue

At the outset, the landlord requested the following:

- Amendment of the application to include a request for a monetary award for outstanding rent for the months of April and May, each in the amount of \$2,554.00.

The landlord submitted a copy of the Tenant's Notice to End Tenancy ("the Tenant's Notice") dated January 31, 2020 which was personally served on an agent for the landlord on January 31, 2020. In the Tenant's Notice, the tenant informed the landlord they would vacate the unit on February 29, 2020.

The landlord provided uncontradicted affirmed testimony that the landlord filed this Application on March 16, 2020 claiming outstanding rent for one month and that rent for the month of April and May 2020 had subsequently accrued. The landlord testified the tenant may have vacated the unit or may still be occupying the unit; visual inspection from the exterior indicated most possessions and furniture have been removed.

Rule 4 of the *Rules of Procedure* allows for the amendment of an application at the hearing in circumstances that can reasonably be anticipated; if sought at the hearing, such an amendment need not be submitted or served.

In consideration of the evidence filed and the testimony of the landlord, further to Rule 4, I find the tenant could reasonably have anticipated that the landlord would claim a monetary order for outstanding rent for April and May 2020. I accordingly allow the landlord to amend the application as sought and the landlord's request for a monetary order for outstanding rent is increased from \$2,554.00 to \$7,662.00.

Issue(s) to be Decided

Is the landlord entitled to an order of possession pursuant to sections 45 and 55 of the *Act*?

Is the landlord entitled to a monetary order pursuant to section 67 of the *Act*?

Is the landlord entitled to retain the security deposit pursuant to section 72 of the *Act*?

Is the landlord entitled to reimbursement of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The landlord testified that the parties entered into a signed residential tenancy agreement commencing September 1, 2013 which is now a month-to-month tenancy. Rent is currently \$2,554.00 a month payable on the first of the month. The landlord submitted a copy of the agreement signed by both parties.

The landlord testified the tenant paid a security deposit at the start of the tenancy of \$1,100.00 which is held by the landlord. The tenant has not provided any written authorization to the landlord to retain the deposit.

The tenant issued the Tenant's Notice on January 31, 2020 informing the landlord the tenant was moving out one month later, on February 29, 2020. The landlord acknowledged service on January 31, 2020.

The landlord submitted a copy of the Tenant's Notice with an effective vacancy date of February 29, 2020 which is in a form provided by the landlord. The landlord testified the tenant did not vacate the unit on that date and may still be in occupancy.

The landlord provided uncontradicted evidence that the tenant is currently in arrears of rent in the amount of \$7,662.00 for accrued rent for March, April and May 2020.

The landlord requested a monetary order for outstanding rent of \$7,662.00, reimbursement of the filing fee of \$100.00 and authorization to apply the deposit of \$1,100.00 to the monetary award.

The landlord requested an order of possession effective two days after service.

A summary of the landlord's claim follows:

ITEM	AMOUNT
Outstanding rent	\$7,662.00
Reimbursement of filing fee	\$100.00
(Less deposit)	(\$1,100.00)
Monetary Order Requested	\$6,662.00

Analysis

I have reviewed all documentary evidence and testimony.

I find the tenant served the landlord with the Tenant's Notice requiring the tenant to vacate the unit on February 29, 2020. I find the Notice complied with section 52.

I accept the uncontradicted evidence of the landlord and find the tenant may not have vacated the unit. I accept the landlord's testimony that due to State of Emergency restrictions, the landlord has not entered the unit and visual observation from the exterior indicated the tenant may still be in occupancy.

The landlord's uncontradicted testimony and evidence were well prepared and credible. I find the landlord has met the burden of proof on a balance of probabilities with respect to all the landlord's claims.

I accordingly find that the landlord is entitled to an order of possession of the rental unit.

I also find the landlord is entitled to a monetary order pursuant to section 67 in the amount of \$7,662.00 for unpaid rent.

Further to the offsetting provisions of section 72, the landlord is entitled to apply the deposit of \$1,100.00 to the monetary award.

I award the landlord reimbursement of the \$100.00 filing fee..

A summary of my monetary finding follows:

ITEM	AMOUNT
Outstanding rent	\$7,662.00
Reimbursement of filing fee	\$100.00
(Less deposit)	(\$1,100.00)
Monetary Order	\$6,662.00

Conclusion

I grant a monetary order to the landlord in the amount of **\$6,662.00**.

This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

I also grant the landlord an order of possession effective two days after service on the tenant.

This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia to be enforced as an order of that 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: May 19, 2020

Residential Tenancy Branch