



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Glenmore Central Apartments Ltd.
RAP4 and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR, OPR-DR, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an order of possession for unpaid rent, further to having served a 10 Day Notice to end the tenancy for unpaid rent, dated March 11, 2020 ("10 Day Notice"); for a monetary order of \$1,920.01 for outstanding unpaid rent from the Tenants, and to recover the \$100.00 cost of their Application filing fee.

The Tenant, J.P., and an agent for the Landlord, W.L. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Tenant said that he had received the Application and the documentary evidence from the Landlord, and had reviewed it prior to the hearing. The Tenant said he did not submit any evidence to the RTB or the Landlord in this matter.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on August 15, 2019, running to August 30, 2020 and then was to operate on a month-to-month basis. They agreed that the Tenants pay the Landlord a monthly rent of \$1,775.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$887.50, and no pet damage deposit.

The Parties agreed that the Tenants did not pay any rent to the Landlord for March, April, or May 2020. The Agent said that the Tenants owed the Landlord \$1,920.01 on March 1, 2020, because there were some parking and other fees owing of \$145.01, as well as the full monthly rent for March 2020. The Agent served the Tenants with a 10 Day Notice signed and dated March 11, 2020 by posting it on the rental unit door on March 11, 2020. The 10 Day Notice had with the rental unit address, and an effective vacancy date of March 21, 2020, automatically corrected to March 24, 2020 by section 53 of the Act. The Landlord issued the 10 Day Notice, because the Tenants had failed to pay rent and other fees owing of \$1,920.01 on March 1, 2020.

In the hearing, the Tenant agreed that he did not pay any rent in March through May 2020. The Parties agreed that this added up to the following:

March 2020	\$1,920.01
April 2020	\$1,775.00
May 2020	<u>\$1,775.00</u>
TOTAL	<u>\$5,470.01</u>

The Tenant said it is his intention to pay the rent owing, but that he has been having hard times, because of the pandemic. He said he has been unemployed for three months, and has been trying to find out about the Canada Emergency Response Benefit. He said that his benefits should be backdated, once he receives them; he said it has been a nightmare trying to get hold of them, and that he intends to use this money to pay the Landlord for overdue rent. However, the Agent was not interested in a settlement agreement with the Tenant; therefore, I will analyze the evidence and make a decision on the Landlord's Application.

Analysis

Based on the documentary evidence and testimony before me for consideration, and pursuant to section 90 of the Act, I find that the Tenants were deemed served with the 10 Day Notice on March 24, 2020, three days after it was posted to the rental unit door.

Section 46(5) of the Act states that a tenant who has received a 10 Day Notice must either pay his rent in full or apply to the RTB for dispute resolution to dispute the 10 Day Notice within five days after the date the tenant receives it; otherwise, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the 10 Day Notice, and must vacate the rental unit by that date.

As there is no evidence before me that the Tenants disputed the 10 Day Notice or paid their rent in full, I find that they are conclusively presumed under section 46(5) of the Act to have accepted the 10 Day Notice, and I find that the tenancy, therefore, ended on March 24, 2020. As a result, I find that the Tenants are overholding the rental unit, and the Landlord is, therefore, entitled to an Order of Possession pursuant to section 55(2)(b) of the Act. As the corrected effective date has passed, and the Agent testified that rent has not been paid for the last three months, I therefore award the Landlord with an Order of Possession effective two days after service on the Tenants.

The Landlord's Application is for rent and other fees owing; however, they did not apply to recover the other fees owing, but only rent owing. Accordingly, I will only consider the rent owing by the Tenants as of March 1, 2020 and going forward, and not the additional \$145.01 the Agent said is owing by the Tenants to the Landlord.

I find that the Tenants owe the Landlord \$1,775.00 in unpaid rent for each of March, April, and May 2020, in the total amount of \$5,325.00. I, therefore, award the Landlord with recovery of \$5,325.00 in unpaid rent from the Tenants pursuant to section 67 of the Act.

I also find that the Landlord is entitled to recover the \$100.00 Application filing fee pursuant to section 72 of the Act. I award the Landlord with a total amount of \$5,425.00 for unpaid rent and recovery of the Application filing fee.

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security deposit of \$887.50, in partial satisfaction of the Landlord's monetary award.

	Debt/Credit	For	Amount
1	Unpaid rent	March 2020	\$1,775.00
2	Unpaid rent	April 2020	\$1,775.00
3	Unpaid rent	May 2020	\$1,775.00
5	Recovery of Filing fee		\$100.00
6	Security Deposit	Partial satisfaction of debt	(\$887.50)
		Total monetary order claim	\$4,337.50

I grant the Landlord a Monetary Order in the amount of **\$4,337.50** for the balance owing from the Tenants after set off, pursuant to section 6 of the Act.

Conclusion

The Landlord is successful in their Application, as they provided sufficient, undisputed evidence to prove their claim for unpaid rent and an order of possession on a balance of probabilities.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the Act, I award the Landlord with recovery of \$5,325.00 in unpaid rent from the Tenants. I also award the Landlord recovery of the \$100.00 Application filing fee for a total award of \$5,425.00. The Landlord is authorized to retain the Tenants' security deposit of \$887.50 in partial satisfaction of this award. The Landlord is granted a Monetary Order for the remainder of the award outstanding in the amount of **\$4,337.50**.

The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order**, as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: May 25, 2020

Residential Tenancy Branch