



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, OPRM-DR, FFL

Introduction

This hearing was scheduled as a result of an interim decision dated March 23, 2020 adjourning the landlord's application for Direct Request pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for unpaid rent pursuant to section 46 and 55 of the *Act*;
- a monetary compensation for unpaid rent pursuant to section 67 of the *Act*;
- recovery of the filing fee pursuant to section 72 of the *Act*.

The landlord BDS attended the hearing via conference call. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions.

The tenant did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional ten 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 codes for the landlord had been provided.

Rule of Procedure 7.3 states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the Arbitrator may conduct the Dispute Resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply. I proceeded with the hearing.

The hearing was originally scheduled in response to the landlord's application for a Direct Request Proceeding.

On reviewing the evidence submitted, I am satisfied that the tenant was served with the Notice of Dispute Resolution and evidentiary documents. The landlord provided testimony that he had served the tenant personally on March 26, 2020. The landlord has uploaded video evidence submitted on April 27, 2020 as confirmation that the tenant was served personally with the Notice of Dispute Resolution and evidentiary documents.

Preliminary Matter – Amendment

In the original monetary worksheet, the landlord was seeking the sum of \$3,550.00 for the months of January, February and March 2020.

ITEM	AMOUNT
January 2020 rent outstanding	\$250.00
February 2020 rent	\$1,650.00
March 2020 rent	\$1,650.00
Total	\$3,550.00

In the hearing the landlord sought to increase the monetary claim to include the rent owed for April and May 2020 for an additional amount of \$3,300.00 (rent is \$1,650.00 per each month).

The Residential Tenancy Branch Rules of Procedure rule 4.2 states that an application may be amended at the hearing, in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the application for Dispute Resolution was made, if an amendment to an application is sought at a hearing, an Amendment to an application for Dispute Resolution need not be submitted or served.

In this case, the landlord is seeking compensation for unpaid rent that has increased since he first applied for Dispute Resolution; I find that the increase in the landlord's monetary claim should have been reasonably anticipated by the tenant.

Therefore, pursuant to Rule 4.2, I order that the landlord's application be amended to include the rent for April and May 2020. The total amount sought at this hearing is for the sum of \$6,850.00

Issue(s) to be Decided

Is the landlord entitled to an order of possession pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

This tenancy commenced on July 26, 2018 as a fixed term tenancy and reverted to a month to month tenancy. The landlord testified that monthly rent in the amount of \$1,650.00 was payable on the first day of each month. The landlord testified that the tenant paid a security deposit of \$825.00 at the beginning of the tenancy which is held in Trust by the landlord.

The landlord testified the tenant failed to pay the full amount of rent for the months of January, February, and March 2020. The landlord testified that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), dated March 1, 2020 by attaching a copy on the door of the rental unit. The landlord also testified that since the issuance of the Notice the tenant remains in the rental unit and has failed to pay any rent for the months of April and May 2020.

The Notice indicates an effective move-out date of March 6, 2020.

The grounds to end the tenancy cited in the Notice were:

- 1) the tenant failed to pay the rent in the amount of \$ 3,550.00 due on March 1, 2020.

The landlord testified that he is seeking an Order of Possession as the tenant has not vacated the property and wishes to include the security deposit for the sum of \$825.00 held in Trust by the landlord.

Analysis

The Interim Decision by the Adjudicator reconvened the Ex-Parte hearing to a participatory hearing on the basis that the tenancy agreement was not signed by the tenant.

I find that there is a tenancy agreement based on the undisputed testimony of the landlord. The tenant paid *Consideration* in the form of a security deposit and rent.

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Section 46(5) says that if a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

Based on the landlord's testimony and the notice before me, I find that the tenant was served with the stated Notice to End Tenancy for Unpaid Rent. There is no evidence before me that the tenant paid the outstanding rent or filed an application to dispute the Notice within 5 days of its receipt. Therefore, I find the tenant is conclusively presumed pursuant to section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of March 11, 2020. Accordingly:

I grant an Order of Possession to the landlord effective two days after service of this Order on the tenant.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$825.00 in part satisfaction of their monetary claim against the tenant.

ITEM	AMOUNT
Notice filed by landlord of rent owed.	\$3,550.00
March 2020 rent	\$1,650.00
April 2020 rent	\$1,650.00
Less security deposit	(\$825.00)
Total monetary amount to landlord.	\$6,025.00

Pursuant to section 67 of the Act, I grant the landlord the monetary award of \$6,025.00 representing the rent from January to May 2020, deducting the security deposit.

As the landlord has been successful in this application, I find that he is entitled to recover the \$100.00 reimbursement of the filing fee pursuant to section 72 of the *Act*.

Conclusion

I grant a monetary order for the sum of \$6,125.00 for the unpaid rent, including the \$100.00 filing fee pursuant to section 67 and 72 of the *Act*.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 16, 2020

Residential Tenancy Branch