



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPU-DR, OPUM-DR, FFL**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order of possession for non-payment of rent and utilities pursuant to section 55;
- a monetary order for unpaid rent and utilities in the amount of \$5,711.88 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This matter was reconvened from a direct request proceeding following with an Interim Decision was issued on March 31, 2020.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:32 am in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 am. The landlord's agent ("**TB**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that TB and I were the only ones who had called into this teleconference.

TB testified he served that the tenant with the notice of dispute resolution form notice of reconvened hearing and supporting evidence package via registered mail on April 3, 2020. TB provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenant is served with these documents as of April 8, 2020, five days after they were mailed, pursuant to sections 88, 89, and 90 of the Act.

TB testified he served additional documentary evidence on the tenant on May 7, 2020 via email to an address that he routinely used to correspond with the tenant about the tenancy. Pursuant to the Director's Order made March 30, 2020, service by email is

permitted until such the as the declaration of state of emergency made March 18, 2020 is cancelled or expires without being extended. As such, I find that the

As such, I find that the landlord served this additional on the tenant in accordance with the Act, and the tenant is deemed served with this on May 10, 2020, three days after they were emailed, pursuant to the Director's Order.

Preliminary Issue – Amendment to Increase Amount Claimed

At the hearing the landlord sought to further amend the application to increase the amount claimed from \$ 5,711.88 to \$9,860.45 to include a claim for unpaid rent and utilities that have accrued since the landlord started this claim.

Rule of Procedure 4.2 states:

4.2 Amending an application 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, the application may be amended at the hearing.

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 and utilities that have increased since the application for dispute resolution was made. 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 increase the amount sought to \$9,860.45.

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order for \$9,860.45; and
- 3) recover its filing fee;

Background and Evidence

While I have considered the documentary evidence and the testimony of TB, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The tenant, the landlord, and a third party ("**JM**") entered into a written tenancy agreement starting July 1, 2019 (the "**Prior Tenancy Agreement**"). Monthly rent was \$1,680, not including utilities. In mid-September 2019, JM notified the landlord that he wanted to end the tenancy and vacate the rental unit, but that the tenant wanted to remain in the rental unit. The tenant confirmed this and continued to stay in the rental unit on the same terms as the Prior Tenancy Agreement.

The landlord sent the tenant a new written tenancy agreement for his signature in September 2019 (the "**Current Tenancy Agreement**"). The terms of the Current Tenancy Agreement are identical those of the Prior Tenancy Agreement. The landlord backdated the Current Tenancy Agreement so as to show that it started on July 1, 2019. The tenant did not return a signed copy of the Current Tenancy Agreement until April 2020. This copy was entered into evidence by the landlord.

The tenant made monthly rent payments in accordance with the terms of the Current Tenancy Agreement in October and November 2019. He did not make any utilities payments.

TB testified that the tenant underpaid December 2019 rent by \$10. He testified that the tenant then fell into arrears as follows:

Date	Description	Owing	Paid	Rent Balance
31-Dec-19	Rent arrears	\$10.00		\$10.00
01-Jan-20	Rent Due	\$1,680.00		\$1,690.00
01-Feb-20	Rent Due	\$1,680.00		\$3,370.00
11-Feb-20	Utilities payment made by landlord	\$379.51		\$3,749.51
11-Feb-20	Utilities payment made by landlord	\$1,482.02		\$5,231.53
01-Mar-20	Rent Due	\$1,680.00		\$6,911.53
04-Mar-20	Utilities payment made by landlord	\$434.24		\$7,345.77
30-Mar-20	Payment		\$2,000.00	\$5,345.77
01-Apr-20	Rent Due	\$1,680.00		\$7,025.77
16-Apr-20	Utilities payment made by landlord	\$566.42		\$7,592.19
01-May-20	Rent Due	\$1,680.00		\$9,272.19
07-May-20	Utilities payment (not yet paid by landlord)	\$588.26		\$9,860.45
			Total	\$9,860.45

The landlord submitted copies of the demands for payment of rent and utilities into evidence. He also provided copies of utilities bills issued by the municipality, which he testified the landlord has paid, which corroborate the above amounts.

On February 24, 2020, the landlord served the tenant with a 10 Day Notice to End Tenancy (the “**Notice**”) via registered mail. The Canada Post Tracking Number confirming this mailing is reproduced on the cover of this decision.

TB testified that the tenant has not disputed the Notice or paid any part of the rental arrears listed above.

Analysis

I have reviewed all documentary evidence provided by the landlord. Section 90 of the Act provides that because the Notice was served by registered mail, the tenant is deemed to have received the Notice five days after its mailing. In accordance with sections 88 and 90 of the Act, I find that the tenant is deemed to have received the Notice on February 29, 2020.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,680 and that this amount did not include utilities. Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement. I accept the evidence before me that the tenant has failed to pay rental and utilities arrears in the amount of \$9,860.45.

I accept the landlord’s undisputed evidence and find that the tenant did not pay the rent or utilities owed in full within the five days granted under section 46 (4) of the Act and did not apply to dispute the Notice within that five-day period.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, March 10, 2020.

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Therefore, I find that the landlord is entitled to an order of possession and a monetary order of \$9,860.45 for unpaid rent and utilities owed as claimed by the landlord.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, it may recover its filing fee from the tenant.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit in partial satisfaction of the monetary orders made above.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$9460.45, representing the following:

Rent and utilities arrears	\$9,860.45
Filing Fee	\$100.00
Security Deposit Credit	-\$500.00
Total	\$9,460.45

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached order(s) by the landlord.

Residential Tenancy (COVID-19) Order, MO 73/2020 (Emergency Program Act) made March 30, 2020 (the “**Emergency Order**”) permits an arbitrator to issue an order of possession if the notice to end tenancy the order of possession is based upon was issued prior to March 30, 2020 (as per section 3(2) of the Emergency Order).

However, per section 4(3) of the Emergency Order, a landlord may not file an order of possession at the Supreme Court of BC unless it was granted pursuant to sections 56 (early end to tenancy) or 56.1 of the Act (tenancy frustrated).

The order of possession granted above is not issued pursuant to either section 56 or 56.1 of the Act. As such, it may not be filed in the Supreme Court of BC until the state of emergency declared March 18, 2020 ends (as per section 1 of the Emergency Order).

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 22, 2020

Residential Tenancy Branch