



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Countess Gardens Inc and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

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

- an order of possession for unpaid rent pursuant to section 46 and 55 of the *Act*;
- a monetary compensation for unpaid rent and/or utilities – security deposit(s) applied the claim pursuant to section 67 of the *Act*.
- recovery of the filing fee pursuant to section 72 of the *Act*.

The landlord's property manager ("the landlord") and the tenant appeared at the hearing and were given the opportunity to make submissions as well as present affirmed testimony and written evidence.

The landlord testified the tenant was served the Notice of Dispute Resolution together with the evidentiary package via Canada Post registered mail on April 17, 2020. The tenant affirmed that she received the Notice of Dispute Resolution and evidentiary documents from the landlord. I find that this satisfied the service requirements set out in sections 88 and 89 of the *Act*

The Canada Post tracking number is listed on the cover page of this decision.

Preliminary Matter – Amendment

In the 10 Day Notice dated February 19, 2020, the landlord was seeking the sum of \$2,700.00 for the months of January and February 2020.

In the hearing the landlord sought to increase the monetary claim to include the rent owed for March, April and May 2020 for an additional amount of \$4,050.00 (rent is \$1,350.00 per each month).

ITEM	AMOUNT
Rent outstanding for January & February 2020	\$2,700.00
March 2020 rent	\$1,350.00
April 2020 rent	\$1,350.00
May 2020 rent	\$1,350.00
Total	\$6,750.00

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 March, April and May 2020. The total amount sought at this hearing is for the sum of \$6,750.00.

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 September 1, 2019 as a fixed term tenancy. The landlord testified that monthly rent in the amount of \$1,350.00 was payable on the first day of each month. The landlord testified that the tenant paid a security deposit of \$675.00 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 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 February 19, 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 March, April and May 2020.

The Notice indicates an effective move-out date of March 3, 2020.

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

- 1) the tenant failed to pay the rent in the amount of \$ 2,700.00 that was due on February 1, 2020.

The landlord testified that he is seeking an Order of Possession as the tenant has not vacated the property and wishes to apply the security deposit for the sum of \$675.00 held in Trust by the landlord towards the rent arrears.

The tenant testified that she had not disputed the Notice and was awaiting funds and attempted to make the transfers via Western Union Money Transfer in April 2020 and that the landlord's bank would not accept the transfers.

The landlord testified that the tenant was not telling the truth and no attempts have been made by the tenant to pay the arrears for several months and her cheques for January and February had been returned by the bank and they were seeking an Order of Possession.

Analysis

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 on February 19, 2020. The tenant provided testimony before me that she has not 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 3, 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 \$675.00 in partial satisfaction of their monetary claim against the tenant.

ITEM	AMOUNT
Notice filed by landlord of rent owed.	\$2,700.00
March 2020 rent	\$1,350.00
April 2020 rent	\$1,350.00
May 2020 rent	\$1,350.00

Less security deposit	(\$675.00)
Total monetary amount to landlord.	\$6,075.00

Pursuant to section 67 of the Act, I grant the landlord the monetary award of \$6,075.00 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 filing fee from the tenant pursuant to section 72 of the *Act*.

Conclusion

I grant a monetary order for the sum of \$6,175.00 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. This order must be served 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 29, 2020

Residential Tenancy Branch