



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order of possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*;
- a monetary order for unpaid rent, pursuant to sections 26 and 67 of the *Act*;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application pursuant to section 72.

Although I left the connection open until 9:45 A.M. to enable the tenant to call into this teleconference scheduled for 9:30 A.M., the tenant did not attend this hearing. The landlord's representative (the landlord) 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 the landlord and I were the only ones who had called into this teleconference.

The landlord affirmed he served the tenant the Notice of Hearing and the evidence (the materials) by registered mail to the rental unit address on April 09, 2020. The tracking number is on the cover page of this decision.

I find the tenant was properly served in accordance with section 89(1)(c) of the *Act*. The tenant is deemed to have received the materials on April 14, 2020, in accordance with section 90 (a) of the *Act*.

In accordance with Rule of Procedure 7.3, this hearing was conducted in the absence of the tenants.

Preliminary Issue – Amendment of monetary claim

At the hearing the landlord sought to amend his application for \$3,200.00 in unpaid rent to include an additional \$6,400.00 for the unpaid rent of April and May 2020.

The increase in the landlord's monetary claim for unpaid rent should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the landlord's monetary claim for unpaid rent to \$9,600.00.

Issues to be Decided

Is the landlord entitled to:

1. obtain an order of possession?
2. retain all or a portion of the tenant's security deposit and a receive a monetary order for unpaid rent?
3. an authorization to recover the filing fee for this application from the tenant?

Background and Evidence

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

The landlord testified the tenancy started on October 03, 2019. Monthly rent is \$3,200.00 and is due on the first day of the month. The landlord still holds a \$1,600.00 security deposit collected at the outset of the tenancy. A tenancy agreement was submitted into evidence.

The landlord submitted a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), dated March 06, 2020, listing \$3,300.00 in unpaid rent and \$20.00 in late payment fee. The effective date is March 16, 2020. The Notice was posted on the tenant's door on March 06, 2020. The landlord affirmed the tenant has not submitted any rent payment after the Notice was served.

The landlord affirmed the tenant continues to reside at the rental unit and is in arrears for \$9,600.00 for March, April and May 2020. The landlord also affirmed the tenant has not paid the monthly parking payment of \$100.00

A monetary order worksheet indicating arrears of \$3,200.00 for March's rent was submitted into evidence. A Proof of Service of Notice to End Tenancy form (RTB-34) was submitted into evidence.

Analysis

Section 26 of the Act requires that a tenancy pay rent when it is due under the tenancy agreement. I accept the landlord uncontested testimony and documentary evidence that the tenant must pay monthly rent of \$3,200.00 on the first day of the month and has been in arrears for \$9,600.00 for March, April and May 2020.

Section 46(1) 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. The Notice is dated March 06, 2020 and was posted to the tenant's door on that date. I deem the tenant was served with the Notice on March 09, 2020, three days after it was posted to the tenant's door, in accordance with sections section 88(g) and 90(c) of the Act.

I find the Notice is in accordance with section 52 of the Act, as it is signed by the landlord, gives the address of the rental unit, states the effective date and is in the approved form.

As the tenant is deemed served with the Notice on March 09, 2020, I correct the effective date of the Notice to March 19, 2020, in accordance with section 46(1) and 53(2) of the Act.

The tenant has not disputed the Notice and is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the corrected effective date of the Notice, March 19, 2020.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord. I order the landlord to retain the \$1,600.00 security deposit.

In summary:

March rent	\$3,200.00
April rent	\$3,200.00
May rent	\$3,200.00
Filing fee	\$100.00
Sub-total	\$9,700.00
Security deposit	-\$1,600.00
Monetary award	\$8,100.00

I warn the tenant that he may be liable for any costs the landlord incurs to enforce the order of possession.

Conclusion

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.

Pursuant to section 67 of the *Act*, I authorize the landlord to retain the \$1,600.00 security deposit and grant the landlord a Monetary Order in the amount of \$8,100.00.

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.

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: June 10, 2020