Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S, OPR, FFL**

Introduction

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

- 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;
- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of $5,000 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:27 am in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 am. Landlord AG 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 AG and I were the only ones who had called into this teleconference.

AG testified she served that the tenants with the notice of dispute resolution form and supporting evidence package via registered mail on April 23, 2020. AG provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenants are deemed served with this package on April 28, 2020, five days after AG mailed it, in accordance with sections 88, 89, and 90 of the Act.

The landlord submitted two documents to the Residential Tenancy Branch on May 30, 2020. AG testified that the tenants were not served wit these documents. Rule of Procedure 3.14 requires that an applicant serve the respond with all documentary evidence no later than 14 days before the hearing. As such, I exclude these documents from evidence.

Preliminary Issue – Amendment to Increase Amount Claimed

At the hearing the landlords sought to further amend the application to include a claim for May and June 2020 rent which remains outstanding.

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 landlords are seeking compensation for unpaid rent that has increased since the application for dispute resolution was made. The increase in the landlords' monetary claim should have been reasonably anticipated by the tenants. Therefore, pursuant to Rule 4.2, I order that the landlords' application be amended to include a claim for May and June 2020 rent ($5,000).

Issues to be Decided

Is the landlord / Are the landlords entitled to:

1) an order of possession;
2) a monetary order for $10,000;
3) recover their filing fee;
4) retain the security deposit in partial satisfaction of the monetary orders made?

Background and Evidence

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

The parties entered into a written, month to month tenancy agreement starting October 27, 2019. Monthly rent is $2,500 and is payable on the first of each month. The tenants paid the landlords a security deposit of $1,250, which the landlords continues to hold in trust for the tenants. Tenant JZ signed the tenancy agreement on October 27, 2019. Tenant JS was added to and signed the tenancy agreement on November 13, 2019.

AG testified that the tenants have not paid any portion of the rent owing for March, April, May, or June 2020. She testified that they are currently $10,000 in rental arrears. She testified that the tenants have ceased communications with the landlords, and that they have not given notice to end the tenancy.

On March 16, 2020, AG posted a 10 Day Notice to End Tenancy (the "**Notice**") on the front door of the rental unit. AG testified that, to her knowledge, the tenants did not dispute the Notice within five days of being served with it, or at all.

Analysis

I have reviewed all documentary evidence provided by the landlords. Section 90 of the Act provides that because the Notice was served by posting it on their door, the tenants are deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the Act, I find that the tenants are deemed to have received the Notice on March 19, 2020.

I find that the tenants are obligated to pay monthly rent in the amount of $2,500. 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 tenants have failed to pay rental arrears in the amount of $10,000, comprised of the balance of unpaid rent owed by June 1, 2020.

I accept AG's undisputed evidence and find that the tenants did not pay the rent 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 tenants are 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 29, 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 landlords are entitled to an order of possession and a monetary order of $10,000 for unpaid rent owed by June 1, 2020.

Pursuant to section 72(1) of the Act, as the landlord have been successful in the application, they may recover their filing fee from the tenants.

Pursuant to section 72(2) of the Act, the landlords 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 tenants pay the landlords $amount, representing the following:

Rent Arrears	$10,000
Security deposit credit	-$1,250
Filing Fee	$100
Total	**$8,850**

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

The landlords are provided with these orders in the above terms and must serve the tenants with this decision and these orders as soon as possible.

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: June 1, 2020

Residential Tenancy Branch