



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, OPR-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 pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$6,600 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This hearing was reconvened following an *ex parte* direct request application which was adjourned to a participatory hearing in a written interim decision made May 4, 2020 (the "**Interim Decision**").

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:52 am in order to enable the tenant to call into this teleconference hearing scheduled for 9:30. The landlord and his daughter ("**JR**") 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, JR and I were the only ones who had called into this teleconference.

The landlord testified that he served the tenant with the notice of reconvened hearing and supporting evidence by emails on May 1, 2020 and May 5, 2020. He testified that the email address used was one that he regularly used to correspond with the tenant about the tenancy. The Director's Order made March 30, 2020 permits service of a party by email to an address routinely used to corresponded about tenancy matters. As such, I find that the tenant is deemed served with these documents on May 4, 2020 and May 8, 2020, three days after the landlord emailed them.

Preliminary Issue – Amendment to Increase Amount Claimed

At the hearing the landlord 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 landlord is seeking compensation for unpaid rent that has 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 include a claim for May and June 2020 rent (\$2,500).

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order for \$9,100; and
- 3) recover their filing fee?

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 claims and my findings are set out below.

The parties entered into a written tenancy agreement starting May 1, 2019. Monthly rent is \$1,250 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$700, which the landlord continues to hold in trust for the tenant.

The landlord testified that the tenant is currently \$9,100 in rental arrears, calculated as follows:

Date	Amount Due	Amount Paid	Balance Owing
01-Sep-19	\$1,250		\$1,250
02-Sep-19		\$850	\$400
01-Oct-19	\$1,250		\$1,650
03-Oct-19		\$850	\$800
01-Nov-19	\$1,250		\$2,050
07-Nov-19		\$850	\$1,200
01-Dec-19	\$1,250		\$2,450
01-Jan-20	\$1,250		\$3,700
10-Jan-20		\$850	\$2,850
01-Feb-20	\$1,250		\$4,100
01-Mar-20	\$1,250		\$5,350
01-Apr-20	\$1,250		\$6,600
01-May-20	\$1,250		\$7,850
01-Jun-20	\$1,250		\$9,100
		Total	\$9,100

The landlord served the tenant with a 10 Day Notice to End Tenancy (the “**Notice**”) on March 16, 2020 via registered mail. He provided a Canada Post tracking number (reproduced on the cover of this decision) confirming the mailing.

The landlord testified that the tenant 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 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 March 21, 2020.

Based on the tenancy agreement entered into evidence, I find that the tenant was obligated to pay monthly rent in the amount of \$1,250. 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 arrears in the amount of \$9,100.

I accept the landlord’s undisputed evidence and find that the tenant 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 tenant 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, April 1, 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 \$ 9,100 for unpaid rent as claimed by the landlord.

Pursuant to section 72(1) of the Act, as the landlord was successful in this application, I find that the landlord is entitled to recover the \$100 filing fee paid for this application.

Pursuant to section 72(2) of the Act, I find the landlord is entitled to retain the security deposit of \$700 in partial satisfaction of the amount owed for unpaid rent by the tenant.

Conclusion

I order that the tenant pay the landlord \$ amount, representing the following:

Rental Arrears	\$9,100
Credit for retaining security deposit	-\$700
Filing Fee	\$100
Total	\$8,500

Should the tenant fail to comply with this order, this order may be filed in, and enforced as an order of, the Small Claims Division of the Provincial Court.

I order that the tenant provide the landlord with vacant possession of the rental unit within two days after service of this decision and attached orders on the tenant. Should the tenant fail to comply with this order, this order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

The landlord is provided with these orders in the above terms and must serve the tenant 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