



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNRLS MNDCLS FFL

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) to obtain an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for authorization to retain all or part of the tenant's security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated April 17, 2020 (Notice of Hearing), application and documentary evidence were considered. The landlord testified that the Notice of Hearing, application and documentary evidence were served on the tenant by registered mail on April 29, 2020. The registered mail tracking number was supplied and has been included on the style of cause for ease of reference. According to the Canada Post online registered mail tracking website, the tenant was served on April 29, 2020. Based on the above, I find the tenant was duly served with the Notice of Hearing, application and documentary evidence on April 29, 2020 and give that the tenant did not attend the hearing, I consider this matter to be unopposed by the tenant.

Preliminary and Procedural Matters

The landlord testified that in addition to the rent owed as claimed, the tenant has subsequently not paid the rent for June 2020. As a result, the landlord requested to

amend their application to include rent owed for June 2020. The landlord also stated that the tenant continues to occupy the rental unit. I find that this request to amend the application does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, I amend the application pursuant to section 64(3)(c) of the Act to \$2,840.00, which is comprised of \$660.00 owing for March, April, May and June 2020, plus a \$25.00 late fee for each month of March through June 2020 inclusive, and the \$100.00 filing fee.

In addition, the landlord requested not to offset the tenant's security deposit to ensure that the tenant provides a written forwarding address to the landlord. As a result, I will not consider the tenant's security deposit at this hearing.

Also, the landlord confirmed their email address and stated that they understood that the decision and orders would be emailed to the landlord and that the decision would be sent by regular mail to the tenant as the landlord did not have an email address for the tenant.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on November 15, 2019; however, the landlord stated that they allow the tenant to provide earlier notice if they wish to consider the tenancy a month to month tenancy.

According to the tenancy agreement, monthly rent of \$660.00 is due on the first day of each month.

The landlord confirmed service of the 10 Day Notice by posting to the tenant's door on March 10, 2020. The landlord stated that the tenant called the landlord about the 10 Day Notice on March 10, 2020. The 10 Day Notice included an effective vacancy date of March 20, 2020 and indicated that \$810.00 was owed as of March 10, 2020. According to the landlord, the tenant did not dispute the 10 Day Notice and has failed to pay rent for March, April, May and June of 2020 at \$660.00 per month. While the

landlord is seeking late fees, I have reviewed the tenancy agreement and there is no provision that sets out a late fee charge of \$25.00, which I will address later in this decision.

The landlord is seeking an order of possession and a monetary order for unpaid rent, plus the filing fee and late fees.

Analysis

Based on the undisputed documentary evidence and undisputed testimony provided by the landlord during the hearing, and on the balance of probabilities, I find the following.

Order of possession - I find that the tenant failed to pay the full amount of rent owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. The effective vacancy date of the 10 Day Notice is listed as March 20, 2020, which I find automatically corrects under section 53 of the Act to March 23, 2020 as I find the tenant was deemed served in accordance with section 90 of the Act on March 13, 2020. I find the tenant is conclusively presumed pursuant to section 46 of the Act, to have accepted that the tenancy ended on the corrective effective vacancy date of the 10 Day Notice, which was March 23, 2020. The tenant continues to occupy the rental unit. Therefore, I **grant** the landlord an order of possession effective **five (5) days** after service on the tenant. I have used 5 days versus 2 days due to the current State of Emergency due to COVID-19.

I also note that *Ministerial Order M089* applies which is located at:

http://www.bclaws.ca/civix/document/id/mo/mo/2020_m089

Claim for unpaid rent and loss of rent – Firstly, as the tenant was served and did not attend the hearing, I find the Application of the landlord is unopposed by the tenant. I am not satisfied that the tenancy agreement set out a late fee charge of \$25.00 and as a result, I dismiss the late fees without leave to reapply, due to insufficient evidence. I find that the tenant owes \$2,640.00 in unpaid rent comprised of \$660.00 for March to June 2020 inclusive. Pursuant to section 26 of the Act, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the landlord has met the burden of proof and has established a monetary claim of **\$2,640.00** comprised of rent arrears.

As the landlord's application has merit, **I grant** the landlord the recovery of the filing fee in the amount of **\$100.00** pursuant to section 72 of the Act.

Monetary Order – I find that the landlord is entitled to a monetary order and that this as follows:

Rent arrears owed by tenant	\$2,640.00
Filing fee	\$100.00
TOTAL BALANCE OWING BY TENANT TO LANDLORD	\$2,740.00

Given the above, I grant the landlord a monetary order pursuant to section 67 of the Act in the amount of **\$2,740.00**.

Conclusion

The landlord's application mostly successful.

The landlord has been granted an order of possession effective five (5) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia and in accordance with *Ministerial Order M089*.

The landlord has established a total monetary claim of \$2,740.00 as indicated above. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 2, 2020

Residential Tenancy Branch