



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU MNRL 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 and utilities pursuant to section 55;
- a monetary order for unpaid rent and utilities in the amount of \$6,643.26 pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:57 am in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 am. The landlord's son ("**SS**") attended the hearing on the landlord's behalf 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 SS and I were the only ones who had called into this teleconference.

Preliminary Issue - Service

SS testified that he mailed the notice of dispute resolution package to the tenant on April 23, 2020. He testified that he posted the supporting evidence package on the door of the rental unit on May 21, 2020. He testified that he attended the rental unit on May 23, 2020, at which time the tenant told him that she received the notice of dispute resolution package in the mail, but that she had misplaced it. She testified that the tenant often misplaces documents that he gives her (he testified he has had to give her a copy of receipts for rent payments and the tenancy agreement multiple times). He testified that he came prepared for this and gave her another copy of the notice of dispute resolution package on May 23, 2020.

Section 89 of the Act requires that applications by the landlord for orders of possession must be served by registered mail; regular mail is not permitted. However, section 71(2)(c) grants the arbitrator the authority to find that any document not served in accordance with section 89 of the Act is sufficiently served for the purposes of the Act. In this case, I find that the notice of dispute resolution package was sufficiently served on the tenant, as she confirmed its receipt and as the landlord furnished her with a further copy of it on May 23, 2020. I find that the tenant was adequately notified of the landlord's claim.

Preliminary Issue – Amendment to Increase Amount Claimed

At the hearing the landlord sought to further amend the application to include a claim for rental arrears for April, May, and June which remains outstanding and for unpaid utilities for December 1, 2019 to May 13, 2020.

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 seeking compensation for unpaid rent that has increased since the application for dispute resolution was made, and for unpaid utilities for which she did not receive an invoice until after the application 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 the unpaid portions of April, May, and June 2020 rent. (\$4,550) and for unpaid utilities between December 1, 2019 and May 13, 2020 (\$402.42).

Issues to be Decided

Are the landlords entitled to:

- 1) an order of possession;
- 2) a monetary order for \$10,745.68; and
- 3) recover their filing fee.

Background and Evidence

While I have considered the documentary evidence and the testimony of SS, 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 tenant, a third-party, and the landlord entered into a written tenancy on March 15, 2019, at some point in mid-to-late April, 2019, the third-party moved out. The tenant wanted the third-party's name off the tenancy agreement, so SS drafted a new tenancy agreement between the landlord and the tenant, and backdated it to March 15, 2019. The tenancy was for a fixed term of one year, starting March 15, 2019 and ending March 15, 2020. Monthly rent is \$2,500 not including utilities and is payable on the first of each month. The tenant paid the landlord a pet damage deposit of \$500, which the landlord continues to hold in trust for the tenant.

SS testified that the tenant is \$9,000 in rental arrears, calculated as follows:

	Due	Paid	Total Owing
December 1, 2019	\$2,500	\$0	\$2,500
January 1, 2020	\$2,500		\$5,000
January 1, 2020		\$2,500	\$2,500
January 22, 2020		\$1,350	\$1,150
February 1, 2020	\$2,500		\$3,650
February 19, 2020		\$850	\$2,800
March 1, 2020	\$2,500		\$5,300
late-March, 2020		\$850	\$4,450
April 1, 2020	\$2,500		\$6,950
May 1, 2020	\$2,500		\$9,450
May, 2020		\$1,600	\$7,850
June 1, 2020	\$2,500		\$10,350
June 1, 2020		\$1,350	\$9,000
		Total	\$9,000

SS testified that the tenant has not paid any portion of the Fortis BC bill since the start of the tenancy. The Fortis BC bill remains in the landlord's husband's name despite repeated requests of the landlord for her to put it in her name, and the tenant repeatedly stating that she would. The landlord submitted an invoice from Fortis BC dated May 13, 2020 for the rental unit in the amount of \$1,745.68. SS testified this represented the cumulative Fortis BC bill since the start of the tenancy.

On March 24, 2020, the landlord posted a 10 Day Notice to End Tenancy (the "**Notice**") on the door of the rental unit indicating that the tenant, as of March 1, 2020, was \$5,300 in rental arrears and owed \$1,343.26 for unpaid utilities. The Notice listed an effective move-out date of April 3, 2020.

The landlord testified that the tenant did not pay these amounts owing, or dispute the Notice within five days of receiving it.

Analysis

I find that the Notice was served in accordance with the Act.

I find that the tenant was obligated to pay monthly rent in the amount of \$2,500 plus utilities. 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 \$ 9,000, comprised of the balance of unpaid rent owed by June 1, 2020.

I accept the undisputed evidence of SS. I find that the tenant has failed to pay any portion of the Fortis BC bill since the start of the tenancy. Based on the invoice submitted into evidence, I find this amount to be \$1,745.68.

I find that the tenant did not pay the rent and utilities arrears 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 6, 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 \$10,745.68 for unpaid rent owed by June 1, 2020 and unpaid utilities owed by May 13, 2020 as claimed by the landlord.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, she may recover her filing fee from the tenant.

Pursuant to section 72(2) of the Act, the landlord may retain the pet damage deposit in partial satisfaction of the monetary orders made above.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$amount, representing the following:

Rental Arrears	\$9,000.00
Unpaid Utilities	\$1,745.68
Filing Fee	\$100.00
Pet Damage Deposit Credit	-\$500.00
Total	\$10,345.68

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached order(s) by the landlord. *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 5, 2020

Residential Tenancy Branch