



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on June 12, 2020. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities; and,
- a monetary order for unpaid rent or utilities.

Two of the Landlord's attended the hearing and provided testimony. The Tenants did not attend the hearing. The landlords testified they sent the Notice of Hearing and all evidence to each of the Tenants by registered mail on May 14, 2020. The Landlords provided proof of service to show that they sent the packages on this date, and that the Tenants signed for these packages. Pursuant to section 89 and 90 of the Act, I find the Tenants are deemed served with the Notice of Hearing and evidence on May 19, 2020, the 5th day after they were mailed.

The Landlords have requested to amend their application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (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.

Further, the Landlords requested to amend their application to allow them to retain the security deposit to offset rent owed. In consideration of these requests, I hereby amend the Landlord's application accordingly.

The Landlords were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38?
4. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

Background and Evidence

The Landlords testified that monthly rent is set at \$1,600.00, and is due on the first of the month. The Landlords stated that the Tenants also rent a separate storage locker for \$150.00 per month, but they are now aware this is not considered part of rent. The Landlord explained that this is why the 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) listed \$1,750.00, rather than \$1,600.00. The Landlords hold a security deposit of \$725.00.

One of the Landlords personally delivered the Notice to the front door of the rental unit on February 5, 2020, and a third party witness was present. A proof of service was provided into evidence. This Notice was issued because the Tenants failed to pay February rent. The Landlords stated that the Tenants have not paid any rent for February, March, April, May, and June 2020, which means they now owe 5x\$1,600.00. The Landlords withdraw their claim for storage fees, as they are aware this is not part of rent.

Analysis

Based on the unchallenged testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt, under section 46(4) of the *Act*, to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the tenants had a balance of unpaid rent at the time the Notice was issued. On February 5, 2020, the Notice was posted to the Tenants' door. Pursuant to section 88 and 90 of the *Act*, I find the Tenants are deemed served with this Notice on February 8, 2020, 3 days after it was posted.

The tenants had 5 days to pay rent in full or file an application for dispute resolution. I find no evidence that the tenants did either. As such, I find the tenants are conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The Landlords are entitled to an order of possession, which will be effective two (2) days after it is served on the tenants.

With respect to the Landlords' request for a monetary order for unpaid rent, I find there is sufficient evidence to demonstrate that the tenants owe and have failed to pay any rent for the last 5 months (February – June 2020). I find the Tenants owe this amount, \$8,000.00, given they still reside in the unit.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the tenants to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the tenants. In summary, I grant the monetary order based on the following:

Claim	Amount
Cumulative unpaid rent	\$8,000.00
Other:	
Filing fee	\$100.00
Less:	
Security Deposit currently held by Agent	(\$725.00)
TOTAL:	\$7,375.00

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenants. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$7,375.00**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 12, 2020

Residential Tenancy Branch