



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPM, MNRL-S**

Introduction

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

- An Order of Possession for a Mutual Agreement to End Tenancy pursuant to section 55; and
- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 10:00 a.m. to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. 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 and I were the only ones who had called into this teleconference.

The landlord attended the hearing and testified he served the tenant with the Notice of Dispute Resolution Proceedings package by registered mail on June 6, 2020 and provided the tracking number for the mailing, recorded on the cover page of this decision. In accordance with the Director's Order allowing service of documents by email, the landlord also sent the Notice of Dispute Resolution Proceedings package by email to an email address provided to him via a message sent to him via 'whatsapp'. That message was provided as evidence by the landlord. I am satisfied the tenant was deemed served on June 11, 2020, five days after sending by registered mail in accordance with sections 89 and 90 of the *Act*.

This hearing proceeded in the absence of the tenant in accordance with Rule 7.3 of the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

Did the parties mutually agree to end the tenancy?

Is the landlord entitled to a monetary order for unpaid rent and to retain the tenant's security deposit?

Preliminary Issue

Since filing the Application for Dispute Resolution, the landlord submits the tenant has not paid rent for the month of June. Rule 4.2 of the Residential Tenancy Branch Rules of Procedure state: *in circumstances that can be reasonably 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.* I have allowed the landlord's oral application to amend the Application for Dispute Resolution to include June rent in accordance with Rule 4.2

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The fixed one year tenancy began on January 1, 2019 becoming month to month on January 1, 2020. Rent was set at \$1,800.00 per month due on the first day of the month. A security deposit of \$900.00 was collected by the landlord which he continues to hold. A condition inspection report was done at the commencement of the tenancy.

The landlord testified the tenant advised him by SMS message on March 6, 2020 that the tenant could not afford the rent. In response, the landlord prepared a mutual agreement to end tenancy for the tenant to sign, putting it in the tenant's mailbox. On April 14 or 15, the landlord noticed the tenant did not sign the agreement or open it, causing the landlord to personally deliver the document to the tenant. The tenant didn't ever sign the agreement.

By the end of February, the tenant was up to date in paying rent, however the tenant only paid one half of March's rent, or \$900.00. The landlord provided copies of rent receipts for each month the tenant paid rent. The landlord testified the tenant has not paid any rent since the half month's rent from March and she has not applied for any rent relief assistance provided by the government. The tenant has stopped

communicating with him. As of the date of this hearing, the tenant owes \$900.00 for the rest of March's rent and \$1,800.00 for April, May and June.

The landlord also seeks to recover unpaid BC Hydro bills. The landlord testified the tenant was to pay one half of the hydro bills for the rental unit and points to the tenancy agreement not having 'electricity' ticked as indication the tenant is responsible for paying one half the utilities for the residential property.

Analysis

- Order of Possession by mutual agreement

A tenancy can end pursuant to section 44(1)(c) if the landlord and tenant agree in writing to end the tenancy. In order for me to find the parties agreed in writing to end the tenancy, a copy of the written agreement signed by the parties must be presented. In this case, no such signed agreement was provided. As such, I find the tenancy has not ended in accordance with section 44(1)(c) and the tenancy shall continue until it has ended in accordance with the *Act*.

- Monetary order for unpaid rent and utilities

Section 26 of the *Act* is clear, A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

The landlord has provided undisputed compelling testimony to satisfy me that rent is set at \$1,800.00 per month and that the tenant stopped paying full rent in February, 2020. Half a month's rent was paid in March and no rent was paid for April, May and June. I find the landlord is entitled to a monetary order of:

Item	Amount
One half rent for March	\$900.00
April rent	\$1,800.00
May rent	\$1,800.00
June rent	\$1,800.00
Total	\$6,300.00

The landlord did not provide copies of BC Hydro bills to indicate how much the landlord claims the tenant owes for Hydro. Additionally, the tenancy agreement does not specifically state the tenant is obligated to pay one half the utilities for the residential

property. As such, I am not satisfied the tenant is required to compensate the landlord for unpaid Hydro utilities and I dismiss this portion of the landlord's claim.

The landlord continues to hold the tenant's security deposit of \$900.00. In accordance with section 72 of the *Act*, the landlord is entitled to retain the full security deposit in partial satisfaction of the monetary order. The landlord is entitled to a monetary order of (\$6,300.00 - \$900.00 = \$5,400.00).

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$5,400.00**. The tenant must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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 29, 2020

Residential Tenancy Branch