



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, OPL, MNDCL-S, FFL

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*).

The landlord applied for the following:

- a monetary order for rent and/or utilities pursuant to section 67 of the *Act* – security deposit applied to the claim;
- a monetary order for damage or compensation pursuant to section 67 of the *Act*;
- an order of possession for Landlord's Use pursuant to sections 49 and 55 of the *Act*.
- authorization to recover the filing fee for this application from the tenant pursuant to section 72(1) of the *Act*.

The landlord PB, landlord's agent SM and the tenant appeared at the hearing and were given the opportunity to make submissions as well as present affirmed testimony and written evidence.

The landlord testified the tenant was served the Notice of Dispute Resolution together with the evidentiary package via Canada Post registered mail on June 19, 2020. The tenant affirmed that she received the Notice of Dispute Resolution and evidentiary documents from the landlord. The tenant did not file any evidentiary documents.

I find that this satisfied the service requirements set out in sections 88 and 89 of the *Act*. The Canada Post tracking number is listed on the cover page of this decision.

Amendment #1

The landlord filed a Two Month Notice to End Tenancy for Landlord's Use of property dated November 5, 2019 and submitted a copy in evidence.

The landlord does not wish to claim the security deposit as the landlord did not collect the security deposit from the previous owner/landlord on the purchase of the property. The tenancy agreement filed in evidence confirms the security deposit was not provided by the tenant.

The tenant affirmed the security deposit was an agreement between the previous sub-tenant and herself. Both parties agreed the security deposit was not an issue. I find the claim for the security deposit related to the landlord's application for damages or compensation under section 67 is dismissed without leave to reapply pursuant to section 65 of the *Act*.

Amendment # 2

In the landlord's Application for Dispute Resolution, the company PBH was originally named as the landlord. The name is no longer applicable. Based on a review of all applicable documentation filed in evidence and the landlord and his agent requests for change of name. I find it would be reasonable to amend the name to PB in accordance with the tenancy agreement.

Amendment # 3

In the hearing the landlord sought to increase the monetary claim to include the rent owed for March, April and May and June 2020 for an additional amount of \$4,000.00 (rent is \$1,000.00 per each month). The landlord requested July 2020 rent, however the tenant provided testimony that she vacated the rental property end of June 2020.

ITEM	AMOUNT
March 2020 rent	\$1,000.00
April 2020 rent	\$1000.00
May 2020 rent	\$1,000.00
June 2020 rent	\$1,000.00

Total	\$4000.00
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The Residential Tenancy Branch Rules of Procedure rule 4.2 states that an application may be amended 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, 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 he first applied for Dispute Resolution; I find that 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 the rent for March, April, May and June 2020.

Issues to be Decided

Is the landlord entitled to an order of possession pursuant to sections 49 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

This tenancy commenced on February 1, 2020 as a fixed term tenancy, reverting to month to month. The landlord testified that monthly rent in the amount of \$1,000.00 was payable on the first day of each month.

The landlord testified that the tenant was served with the Two Month Notice to End Tenancy for Landlord's Use (Two Month Notice) dated November 5, 2019 by personally serving it on the tenant.

The landlord provided testimony that he provided the tenant with a three-month rent-free rent period from December 2019 to February 2020. The tenant failed to vacate the rental unit. The landlord is seeking rent for the months of March, April, May and June 2020.

The landlord also testified that since the issuance of the Notice the tenant remains in the rental unit and has failed to pay rent for the months of March, April, May and June 2020. The Two Month Notice indicates an effective move-out date of March 1, 2020.

The tenant affirmed that she vacated the rental property around June 30, 2020 and denied leaving the property dirty and littered with garbage outside. She affirmed the garbage belonged to the tenants in the upstairs unit. The tenant affirmed she had not paid the outstanding rent or filed an application to dispute the Two Month Notice.

The landlord's agent affirmed they are seeking an Order of Possession to ensure that the tenant does not return to the property.

Analysis

Based on the Two Month Notice entered into evidence and the testimony of both parties, I find that service of the Two Month Notice was affected on the tenant on November 5, 2019, in accordance with section 88 of the *Act*.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 49(3) of the *Act* allows a landlord to end a tenancy if the landlord intends in good faith to move in themselves or allow a close family member to move into the unit. Section 49(1) of the *Act* defines a close family member as: (a) the individual's parent, spouse or child, or (b) the parent or child of that individual's spouse.

(8) A tenant may dispute

(a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or

(b)a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b)must vacate the rental unit by that date.

Accordingly, based on the landlord's testimony and the Two Month Notice I find that the tenant was served with a valid Two Month Notice. The tenant provided testimony that she has not paid the outstanding rent or filed an application to dispute the Two Month Notice.

Therefore, in accordance with section 55 of the Act, I grant an Order of Possession to the landlord effective two days after service of this Order on the tenant.

ITEM	AMOUNT
March 2020 rent	\$1,000.00
April 2020 rent	\$1000.00
May 2020 rent	\$1,000.00
June 2020 rent	\$1,000.00
Total Monetary amount due to landlord	\$4,000.00

Pursuant to section 67 of the Act, I grant the landlord the monetary award of \$4,000.00 representing the rent from March to June 2020.

As the landlord has been successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the tenant pursuant to section 72 of the Act.

Conclusion

I grant a monetary order for the sum of **\$4,100.00** for the unpaid rent, including the \$100.00 filing fee pursuant to section 67 and 72 of the *Act*.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible.

Should the tenant 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.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. This order must be served on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: July 21, 2020

Residential Tenancy Branch