



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNRL-S, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order of possession under a One Month Notice to End Tenancy for Cause (the Notice), pursuant to sections 47 and 55 of the Act;
- a monetary order for compensation for unpaid rent, pursuant to section 67 of the Act;
- an authorization to retain all or a portion of the tenant's security deposit in satisfaction of the monetary order requested, pursuant to section 72 of the Act; and
- an authorization to recover the filing fee for this application, pursuant to section 72 of the Act.

I left the teleconference connection open until 11:12 A.M. to enable the tenant to call into this teleconference hearing scheduled for 11:00 A.M. The tenant did not attend the hearing. The landlord, represented by agent AB (the landlord), attended the hearing 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 the landlord and I were the only ones who had called into this teleconference.

I accept the landlord's testimony that the tenant was served with the application and evidence (the materials) by registered mail on August 05, 2020, in accordance with section 89(2)(b) of the *Act* (the tracking number is recorded on the cover of this decision).

Section 90 of the *Act* provides that a document served in accordance with Section 89 of the *Act* is deemed to be received if given or served by mail, on the 5th day after it is

mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on August 10, 2020, in accordance with section 90 (a) of the *Act*.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Preliminary Issue – Amendment of monetary claim

At the hearing the landlord sought to amend his application for \$4,050.00 in unpaid rent to include an additional \$1,350.00 for the unpaid rent of September 2020.

The increase in the landlord's monetary claim for unpaid rent should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the *Act*, I amend the landlord's monetary claim for unpaid rent to \$5,400.00.

Issues to be Decided

Is the landlord entitled to:

- obtain an order of possession?
- a monetary order for unpaid rent?
- an authorization to retain all or a portion of the tenant's security deposit?
- an authorization to recover the filing fee for this application?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claim and my findings are set out below.

The landlord testified the fixed term tenancy started on May 01, 2020 and the tenant continues to occupy the rental unit. Monthly rent is \$1,350.00, due on the first day of the month. The landlord still holds a \$675.00 security deposit collected at the outset of the tenancy. A written tenancy agreement was submitted into evidence.

The landlord served in person the Notice dated July 27, 2020 on July 29, 2020. The effective date was August 31, 2020. A witnessed Proof of Service of Notice to End Tenancy form (RTB-34) attesting the Notice was served in person at 3:40 P.M. on July 29, 2020 was submitted into evidence.

A copy of the Notice was submitted into evidence. The ground to end the tenancy cited in the Notice was:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Notice specifies:

- July 24th notice was given to enter unit [anonymized] for a safety inspection July 27th
- On July 27th upon arrival to unit 306 the locks were changed, tenant refused entry (She was home).
- Letters + emails were sent to the tenant to obtain copy of key but tenant was uncooperative.

The landlord stated the tenant did not pay rent due on May, June, July, August and September 01, 2020. A monetary order worksheet dated July 29, 2020 indicating total arrears of \$4,050.00 (for rent due on June, July and August 01, 2020) was submitted into evidence.

Analysis

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.

Order of Possession

Based on the undisputed testimony of the landlord and the proof of service (RTB-34), I find that the tenant was served the Notice on July 29, 2020 in accordance with section 88 (a) of the Act.

Sections 47(4) and (5) of the Act state:

- (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.
- (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), 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.

Section 47(5) is mandatory, and I do not have discretion as to its application. Based on the landlord's testimony I find that the tenant did not file an application to dispute the notice within 10 days, or at all.

Therefore, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice (August 31, 2020) and must move out of the rental unit. As this has not occurred, I find that the landlord is entitled to an order of possession effective two days after service, pursuant to section 55(2)(b) of the Act.

The Notice is in accordance with Section 52 of the Act, as it is signed by the landlord, gives the address of the rental unit, states the effective date, the grounds to end tenancy and is in the approved form.

It is not necessary for me to determine if the tenant acted as alleged by the landlord on the Notice due to the application of sections 47(4) and (5) of the Act.

As such, I make no findings as to the truth of the landlord's allegations about the conduct of the tenant.

Monetary order for unpaid rent

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement.

I accept the landlord's uncontested testimony that the tenant must pay monthly rent of \$1,350.00 on the first day of the month and has been in arrears for \$5,400.00 for unpaid rent of June, July, August and September 2020.

Thus, I order the tenant to pay the landlord the amount of \$5,400.00 for unpaid rent of June, July, August and September 2020.

Residential Tenancy Branch Policy Guideline 52 states:

E. APPLICATIONS FOR MONETARY ORDERS FOR UNPAID AFFECTED RENT MADE BEFORE JULY 31, 2020

If a tenancy has ended prior to a repayment plan being given, or ends after a repayment plan has been given or there is a prior agreement and the tenant has failed to pay an installment, the arbitrator may grant a monetary order that the unpaid affected rent be paid in full as of the date of the order.

I notice the order of possession is ordered on the basis of a one month notice to end tenancy for cause non-related with unpaid affected rent, this application was submitted before July 31, 2020 and the tenancy ended on August 31, 2020.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord. I order the landlord to retain the \$675.00 security deposit.

In summary:

June rent	\$1,350.00
July rent	\$1,350.00
August rent	\$1,350.00
September rent	\$1,350.00
Filing fee	\$100.00
Sub-total	\$5,500.00
Security deposit	-\$675.00
Monetary award	\$4,825.00

I warn the tenant that she may be liable for any costs the landlord incurs to enforce the order of possession.

Conclusion

Pursuant to section 55(2)(b) of the Act, I grant an order of possession to the landlord effective **two days after service of this order** 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.

Pursuant to sections 38, 67 and 72 of the Act, I authorize the landlord to retain the \$675.00 security deposit and grant the landlord a monetary order in the amount of \$4,825.00.

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.

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: September 03, 2020

Residential Tenancy Branch