



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

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

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the tenant received the landlord's application for dispute resolution via registered mail in July 2020. I find that the tenant was served in accordance with section 89 of the *Act*.

Preliminary Issue- Amendment

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states that 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.

The landlord's original application claimed unpaid rent in the amount of \$7,200.00. Since filing for dispute resolution, the landlord testified that the amount of rent owed by the tenant has increased to \$8,700.00.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlord filed the application, should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord's application to include a monetary claim for all outstanding rent in the amount of \$8,700.00.

Issues to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 1, 2014 and is currently ongoing. Monthly rent in the amount of \$1,800.00 is payable on the first day of each month. A security deposit of \$800.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on July 3, 2020 a 10 Day Notice to End Tenancy for Unpaid Rent with an effective date of July 13, 2020 (the “10 Day Notice”) was posted on the tenant’s door. The tenant confirmed receipt of the 10 Day Notice on July 3, 2020.

The 10 Day Notice states that the tenant failed to pay \$7,200.00 due on March 1, 2020. The landlord testified that at the time the 10 Day Notice was posted, the tenant owed \$7,200.00 in unpaid rent from March to July 2020 and that the tenant now owes \$8,700.00.

The tenant testified that he did not file an application with the Residential Tenancy Branch to dispute the 10 Day Notice.

Both parties agree to the following statement of account from March to September 2020:

Month	Rent Paid by Tenant	Total Outstanding Rent
March	\$900.00	\$900.00
April	\$0.00	\$2,700.00
May	\$300.00	\$4,200.00
June	\$300.00	\$5,700.00
July	\$300.00	\$7,200.00
August	\$300.00	\$8,700.00
September	\$1,800.00	\$8,700.00

The tenant testified that he was not able to pay the rent because the subject rental property had a mouse problem that the landlord did not deal with properly and so his roommates moved out. The tenant testified that he was not able to find new roommates because of the mouse problem and COVID 19.

Analysis

Section 88 of the *Act* states that a 10 Day Notice may be served on the tenant by posting. I find that the tenant received the 10 Day Notice on July 3, 2020 in accordance with section 88 of the *Act*.

Ministerial Order no. M195 made under the *Emergency Program Act* states at section 3(1) that:

3 (1) A landlord must not give a tenant notice to end a tenancy under section 46 (1) [landlord's notice: non-payment of rent] of the Residential Tenancy Act in respect of affected rent that is unpaid.

Section 1 of the Ministerial Order no. M195 states:

(1) In this order:

“affected rent” means

(a) rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the emergency period, and

(b) utility charges that become due to be paid by a tenant during the emergency period, if a tenancy agreement requires the tenant to pay utility charges to the landlord;

“emergency period” means the period that starts March 18, 2020 and ends on the date on which the last extension of the declaration of a state of emergency made March 18, 2020 under section 9 (1) of the Emergency Program Act expires or is cancelled.

Pursuant to the above, I find that March 2020's rent was due on March 1, 2020 and only \$900.00 was paid towards it. I find that March 2020's rent is not affected rent as defined by Ministerial Order no. M195. Therefore, the landlord was permitted to serve the tenant with the 10 Day Notice.

Based on the testimony of both parties, I find that the tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice.

In this case, this required the tenant to vacate the premises by July 13, 2020, as that has not occurred, I find that the landlord is entitled to a two-day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the two days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Residential Tenancy Policy Guideline #52 states:

If the tenancy has ended and the landlord wants to pursue an amount of unpaid affected rent, the landlord does not have to give the tenant a repayment plan.

As I have determined that this tenancy has ended, I find that the landlord is entitled to seek a monetary award for unpaid affected rent in addition to unpaid unaffected rent and is not required to give the tenant a repayment plan.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$1,800.00 on the first day of each month, whether or not the landlord dealt with the alleged mouse problem. I make no findings on whether or not a mouse problem existed and whether or not the landlord's response was appropriate. Based on the testimony of the parties I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlord \$8,700.00 in unpaid rent from March to August 2020.

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
 - (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38(a) and 38(b) of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$800.00.

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

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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.

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Unpaid rent	\$8,700.00
Filing fee	\$100.00
Less security deposit	-\$800.00
TOTAL	\$8,000.00

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 08, 2020

Residential Tenancy Branch