



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wakesiah Apartments Inc.
and [Tenant name suppressed to protect privacy]

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 October 26, 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.

The Landlords attended the hearing and provided testimony. The Tenant did not attend the hearing. The Landlords testified that they personally served the Tenant with the Notice of Hearing, amendment and evidence on October 7, 2020. The Landlords stated that they did not initially receive the Notice of Hearing package from our branch until several weeks after it was apparently sent by our branch. As such, the Landlords were slightly delayed in serving the Tenant with the Notice of Hearing, amendment and evidence.

I note that all documentation, including amendments and evidence, must be received by the Tenant no later than 14 days before the hearing. In this case, I find the Tenant was served on October 7, 2020, with the Landlords' application, Notice of Hearing, and their amendment (removing the second rental unit from the proceeding). I find the Landlords sufficiently served the Tenant with their application, evidence, and amendment.

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 both of these requests, I hereby amend the Landlords' 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. Are the Landlords entitled to an order of possession for unpaid rent or utilities?
2. Are the Landlords entitled to a monetary order for unpaid rent or utilities?
3. Are the Landlords 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 rent, in the amount of \$1,350.00, is due on the first day of each month, and that they hold a security deposit of \$675.00.

The Landlords testified that the Tenant has a history of non-payment of rent over several months this year. The Landlord acknowledged that they are aware that they cannot issue a 10 Day Notice for unpaid "affected rent" (without first giving a repayment plan), which is rent that became due from March 18, 2020, until August 20, 2020. The Landlords stated that this particular 10 Day Notice was issued because the Tenant also failed to pay rent that was not "Affected rent".

More specifically, the Landlords explained that the Tenant failed to pay the following amounts this calendar year:

- March 1, 2020

- August 1, 2020 (affected rent)
- September 1, 2020
- October 1, 2020

Total: \$5,400.00

As a result of the unpaid rent, the Landlords issues the 10 Day Notice by giving it to the Tenant, in person on September 4, 2020, in the amount of \$1,350.00. The Landlords stated that since that time the Tenant has not paid any money, and has stopped responding to them. The Landlords stated that the Tenant has also boarded up the windows and is dealing drugs out of the rental unit.

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, under section 46(4) of the *Act*, after receipt 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*.

I note that a Landlord may not issue a 10 Day Notice for unpaid affected rent, without first offering the Tenant a chance to pay off the arrears via a repayment plan. I note affected rent is rent that became due between March 18, 2020, until August 20, 2020. However, in this case, I note the Landlords issued this 10 Day Notice due to unpaid rent that was not "Affected rent". As such, I find the Landlords were entitled to issue this 10 Day Notice.

In this case, I find that the Tenant owed past due rent at the time the 10 Day Notice was issued. The Landlords personally served the 10 Day Notice to the Tenant on September 4, 2020, in person, for \$1,350.00 in unpaid September 2020 rent. I find the Tenant received the 10 Day Notice on September 4, 2020, the same day it was personally given to her.

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

Next, I turn to the Landlord's request for a Monetary Order for unpaid rent. Given then tenancy is ending, I find the Landlord is not required to offer the Tenant a repayment plan for either the affected rent, or the unaffected rent. Based on the evidence before me, I find there is sufficient evidence to demonstrate that the Tenant owes and has failed to pay \$5,400.00 in rent (March 2020, August 2020, September 2020, and October 2020).

The Landlord requested that they be able to retain the security deposit of \$675.00 to offset the amount of rent owed, and to recover the \$100 filing fee for this application.

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

Claim	Amount
Cumulative unpaid rent as above	\$5,400.00
Other:	
Filing fee	\$100.00
Less:	
Security Deposit currently held by Landlord	(\$675.00)
TOTAL:	\$4,825.00

Conclusion

The Landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails 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 **\$4,825.00**. This order must be served on the Tenant. If the Tenant fails 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: October 26, 2020

Residential Tenancy Branch