



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, OPR, 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 10-Day Notice to End Tenancy for Unpaid Rent ("the Notice ") pursuant to sections 46 and 55;
- a monetary order for compensation for unpaid rent, pursuant to section 67;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the tenant's security deposit, under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 10:05 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. The landlord, represented by advocate AG (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, amendment and evidence (the materials) by registered mail on October 30, 2020, in accordance with section 89(2)(b) of the Act (the tracking numbers are 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 November 04, 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 her application for \$5,824.00 in unpaid rent and utilities and damage to include an additional \$3,600.00 for the unpaid rent of November and December 2020 and January 2021.

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, utilities and damage to \$9,424.00.

Issues to be Decided

Is the landlord entitled to:

1. an order of possession based on the Notice?
2. a monetary order for unpaid rent?
3. a monetary order for loss?
4. an authorization to retain the tenant's security deposit?
5. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is her obligation to present the evidence to substantiate her application.

The landlord testified the periodic tenancy started in January 2017. Rent is \$1,200.00 per month, due on the first day of the month. At the outset of the tenancy a security deposit of \$600.00 was collected and the landlord holds it in trust. The tenant must pay the gas and electricity utility bills.

The landlord affirmed she served the Notice in person on October 13, 2020, at 6:35 P.M. The Notice and a proof of service form were submitted into evidence. The October 13, 2020 Notice is for failure to pay rent due on October 01, 2020.

The landlord stated the tenant is in arrears for:

- The balance of January 2020 rent in the amount of \$630.00 (the landlord received the amount of \$570.00) – item 01 of the amended monetary order worksheet (the worksheet).
- Rent for February, March, September, October, November and December 2020 and January 2021 in the total amount of \$8,400.00 – items 02 to 05 of the worksheet.
- The gas bill due on March 17, 2020 in the amount of \$123.21 – item 06 of the worksheet. A gas bill due on that date in the amount of \$75.34 was submitted into evidence. The landlord was not able to explain why she applied for a greater amount than the bill.
- The gas bill due on September 12, 2020 in the amount of \$34.16 for – item 07 of the worksheet. A gas bill due on that date in an amount greater than \$34.16 was submitted into evidence.
- The gas bill due on October 15, 2020 in the amount of \$86.91 – item 08 of the worksheet. A gas bill due on that date in an amount of \$82.99 was submitted into evidence. The landlord was not able to explain why she applied for a greater amount than the bill.
- A false alarm invoice in the amount of \$150.00. The landlord stated the tenant falsely report a fire on January 14, 2020. An invoice in the amount of \$150.00 for a false alarm was submitted into evidence.

The landlord submitted into evidence the worksheet and a repayment plan served in person on October 03, 2020. The rent in arrears the landlord is claiming for in this application is not included in the repayment plan. The landlord also said on October 23, 2020 she personally served the tenant a letter asking her to pay the outstanding utility bills.

Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

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.

Unpaid rent

I accept the landlord's uncontested testimony that the tenancy agreement requires the tenants to pay monthly rent of \$1,200.00 on the first day of the month.

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

Based on the landlord's undisputed testimony and the worksheet, I find the tenant is in arrears for \$630.00 for the balance of January 2020 and \$8,400.00 for the months of February, March, September, October, November and December 2020 and January 2021 (\$1,200.00 per month), in the total amount of \$9,030.00.

Based on the landlord's undisputed testimony and the proof of service form submitted into evidence, I find the Notice was served in person to the tenant on October 13, 2020.

I find 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 and is in the approved form.

Unpaid utilities

Based on the landlord's undisputed testimony and the gas bills submitted into evidence, I find the tenant did not pay the gas bill and owes the payment of utilities:

- gas bill due on March 17, 2020 in the amount of \$75.34;
- gas bill due on September 12, 2020 in the amount of \$34.16;
- gas bill due on October 15, 2020 in the amount of \$82.99.

As such, I award the landlord the amount of \$192.49.

Fire alarm

Based on the landlord's undisputed testimony and the false alarm invoice in the amount of \$150.00, I find the tenant falsely reported a fire and the landlord was charged the amount of \$150.00.

Thus, I award the landlord of amount of \$150.00.

Filing fee and summary

As the landlord was successful in her 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 \$600.00 security deposit.

In summary:

Balance of August's rent (\$1,200.00-\$570.00)	\$630.00
February, March, September, October, November, December 2020 and January 2021 (\$1,200.00 per month)	\$8,400.00
Gas bills (\$75.34+\$34.16+\$82.99)	\$192.49
Fire alarm	\$150.00
Filing fee	\$100.00
Sub-total	\$9,472.49
Security deposit	-\$600.00
Monetary award	\$8,872.49

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

Conclusion

I grant an order of possession to the landlord effective **two days after service of this order** on the tenant. Should the tenants 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 \$600.00 security deposit and grant the landlord a monetary order in the amount of \$8,872.49.

The landlord is provided with this order in the above terms and the tenants must be served with **this order**. 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: January 15, 2021

Residential Tenancy Branch