



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, OPR-DR, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an adjourned *ex-parte* 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 unpaid rent, pursuant to sections 26 and 67; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 9:52 A.M. to enable the tenants to call into this teleconference hearing scheduled for 9:30 A.M. The tenants did not attend the hearing. The landlord and advocate GK (the landlord) attended the hearing and were 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, his advocate and I were the only ones who had called into this teleconference.

I accept the landlord's testimony that the tenants were served with the application and evidence (the materials) by registered mail on December 26, 2020, in accordance with section 89(2)(b) of the Act (the tracking numbers are recorded on the cover of this decision).

The landlord did not serve the tenants the amendment dated February 11, 2020 submitted into evidence. The amendment is not accepted, per Rule of Procedure 4.6. The landlord did not submit into evidence the second evidence package served to the tenants by attaching it to the rental unit door on January 01, 2021. The second evidence package is not accepted into evidence, per Rule of Procedure 3.13.

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 tenants are deemed to have received the materials on December 31, 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 respondents.

Preliminary Issue – Amendment of monetary claim

At the hearing the landlord sought to amend his application for \$4,500.00 in unpaid rent to include an additional \$12,000.00 for the unpaid rent of December 2020, January, February and March 2021.

The increase in the landlord's monetary claim for unpaid rent should have been reasonably anticipated by the tenants. Therefore, pursuant to Rule of Procedure 4.2 and section 64(3)(c) of the Act, I amend the landlord's monetary claim for unpaid rent to \$16,500.00.

Issues to be Decided

Is the landlord entitled to:

1. obtain an order of possession based on the Notice?
2. a monetary order for unpaid rent?
3. 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 claims and my findings are set out below.

The landlord testified the tenancy started on October 03, 2020. Monthly rent is \$3,000.00 and is due on the first day of the month. The tenancy agreement was submitted into evidence. It indicates the tenancy started on October 03, 2020 and the tenants did not pay the \$1,500.00 security deposit

On November 15, 2020 the landlord served the tenants with the Notice by placing it in the rental unit's mailbox. The landlord submitted a copy of the November 15, 2020 Notice into evidence. The Notice indicates \$3,000.00 in unpaid rent due on November 03, 2020 and \$1,500.00 for the security deposit. The effective date is November 25, 2020.

A witnessed proof of service stating the Notice was placed in the tenants' mailbox on November 15, 2020 was submitted into evidence.

The landlord stated the tenants did not pay rent and continue to occupy the rental unit.

A Direct Request Worksheet (RTB form 46) was provided. It states the tenants did not pay rent due on November 03, 2020 in the amount of \$3,000.00 and the security deposit due on October 04, 2020 in the amount of \$1,500.00.

Analysis

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

The tenants are deemed served the Notice on November 18, 2020, three days after it was placed in the tenants mailbox, in accordance with section 88(f) and 90 (d) of the Act.

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 tenants must pay monthly rent of \$3,000.00 and are in arrears for \$15,000.00 for November, December 2020, January, February and March 2021. Based on the Notice and the Direct Request Worksheet, I find rent is due on the third day of the month.

Section 46(1) of the Act states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Pursuant to section 53(2) of the Act, I correct the Notice's effective date to November 28, 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.

The tenants have not disputed the Notice and are conclusively presumed under sections 46(5) of the Act to have accepted that the tenancy ended on the corrected effective date of the Notice, November 28, 2020.

Security deposit

Section 1 of the Act defines security deposit as “money paid, or value or right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property”.

Section 17 of the Act states: “A landlord may require, in accordance with this Act and the regulations, a tenant to pay a security deposit as a condition of entering into a tenancy agreement or as a term of a tenancy agreement.”

Section 7 of the Act state:

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.

The landlord failed to prove, on a balance of probabilities, that a loss or damage has resulted from the tenants' non-compliance with the act or the tenancy agreement.

Thus, I dismiss the landlord's application for a monetary order for the security deposit.

The landlord may submit an application for a monetary order if the tenants caused any loss or damage to the rental unit.

Filing fee and summary

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

In summary:

Item	Amount \$
November 2020 rent	3,000.00
December 2020 rent	3,000.00
January 2021 rent	3,000.00
February 2021 rent	3,000.00
March 2021 rent	3,000.00
Filing fee	100.00
Total	15,100.00

I warn the tenants that they 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 tenants. 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 26 and 72 of the Act, I grant the landlord a monetary order in the amount of \$15,100.00.

The landlord is provided with this order in the above terms and the tenants must be served with this order. Should the tenants 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: March 17, 2021