



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nest Property Management and Real Estate
Service and [tenant name suppressed to protect privacy]

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;
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 9:41 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, represented by agent BB (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.

At the outset of the hearing the landlord affirmed he understands it is prohibited to record this hearing.

I accept the landlord's testimony that the tenants were served with the application and evidence (the materials) by registered mail on December 24, 2020, in accordance with section 89(2)(b) of the Act. The landlord served the interim decision and the notice of hearing by registered mail on January 18, 2021 (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 tenants are deemed to have received the materials on December 29, 2020 and the interim decision and notice of hearing on January 23, 2021, 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 \$4,850.00 in unpaid rent to include an additional \$4,700.00 for the unpaid rent of January, February, March and April 2021.

The increase in the landlord's monetary claim for unpaid rent should have been reasonably anticipated by the tenants. 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 \$9,550.00.

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. 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 01, 2018. Monthly rent is \$1,150.00 and is due on the first day of the month. At the outset of the tenancy a security deposit of \$575.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence. It states: "Clause 7: ARREARS – There is a \$25.00 late fee for all late rent past the 1st unless given 7 days' written notice"

On December 02, 2020 at 9:30 A.M. the landlord served the tenants with the Notice by attaching it to the rental unit's door. A witnessed proof of service (RTB form 34) stating the Notice was attached to the rental unit's door on December 02, 2020 was submitted into evidence.

The landlord submitted a copy of the December 02, 2020 Notice. The Notice indicates \$4,850.00 in unpaid rent due on December 01, 2020. The effective date is December 14, 2020.

The tenants' address and the rental unit's address on the Notice include a unit number that does not appear on the tenancy agreement or the Application for Dispute Resolution. The landlord affirmed the unit number was mistakenly included, as the correct address of the rental unit does not contain a unit number.

A Direct Request Worksheet (RTB form 46) was provided. It states the tenants did not pay rent due in August, September, October, November and December 2020 in the monthly amount of \$1,150.00 and the monthly late payment fee of \$25.00 and are in arrears for rent and late payment fee the sum of \$4,850.00. The landlord said on July 31, 2020 the tenants had a credit of \$75.00 and on October 29, 2020 the tenants paid \$1,000.00. The tenants continue to occupy the rental unit.

The landlord stated the tenants did not pay rent and the late payment fee in January, February, March and April 2021. On March 31, 2021 the tenants paid \$1,000.00 and the landlord issued a use and occupancy receipt.

Analysis

The tenants are deemed served the Notice on December 05, 2020, three days after it was attached to the rental unit's door, in accordance with sections 88(g) and 90(c) 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 and the tenancy agreement that the tenants must pay monthly rent of \$1,150.00 on the first day of the month and a late payment fee of \$25.00 when rent is not paid on the due date. Based on the landlord's uncontested testimony, the Notice and the Direct Request Worksheet, I find the tenants are in arrears for August, September, October, November, December 2020, January, February, March and April 2021 rent.

Section 7(1)(d) of the Residential Tenancy Regulation allows an administration fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution or for late payment of rent. Policy Guideline 04 notes a clause in a tenancy agreement providing for the payment by the tenant of a late payment fee will be a penalty if the amount charged is not in proportion to the costs the landlord would incur as a result of the late payment.

In summary, the tenants are in arrears for:

Date	Reference	Balance \$
July 31, 2020	Prior credit	-75.00 (credit)
August 2020	August rent and late fee (1,175.00)	1,100.00
September 2020	September rent and late fee (1,175.00)	2,275.00
October 2020	October rent and late fee (1,175.00)	3,450.00
October 29, 2020	Payment of 1,000.00	2,450.00
November 2020	November rent and late fee (1,175.00)	3,625.00
December 2020	December rent and late fee (1,175.00)	4,800.00
January 2021	January rent and late fee (1,175.00)	5,975.00
February 2021	February rent and late fee (1,175.00)	7,150.00
March 2021	March rent and late fee (1,175.00)	8,325.00
March 31, 2021	Payment of 1,000.00	7,325.00
April 2021	April rent and late fee (1,175.00)	8,500.00

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. As the tenants are deemed served the Notice on December 05, 2020, I correct the Notice's effective date to December 15, 2020, pursuant to section 53(2) of the Act.

Section 68(1) of the Act allows the arbitrator to amend the Notice:

If a notice to end a tenancy does not comply with section 52 [form and content of notice to end tenancy], the director may amend the notice if satisfied that

(a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and

(b) in the circumstances, it is reasonable to amend the notice.

Based on the landlord's convincing testimony, I am satisfied the tenants were aware that the tenants' address and the rental unit's address on the Notice mistakenly included a unit number and it is reasonable to amend the Notice. As such, I amend the December 02, 2020 Notice to remove the unit number from the tenants' address and the rental unit's address.

Section 3 of Covid19 regulation states:

As an exception to sections 44 (1) (a) (ii) and 46 [landlord's notice: non-payment of rent] of the Residential Tenancy Act and any other provision of the Residential Tenancy Act and the Residential Tenancy Regulation, a landlord must not give a tenant notice to end a tenancy under section 46 (1) of the Residential Tenancy Act in respect of affected rent that is unpaid and instead this Division applies.

Affected rent is due between March 18 and August 17, 2020. The Notice was issued for rent due on the first day of August, September, October, November and December 2020.

Based on the landlord's convincing testimony and the Direct Request Worksheet, I am satisfied the tenants were aware the Notice was issued for unpaid rent due on the first day of August, September, October, November and December 2020. I find it is reasonable to amend the Notice to exclude the rent due on August 01, 2020, as the tenants only paid \$1,000.00 after the Notice was issued and did not dispute the Notice. As such, I amend the December 02, 2020 Notice for unpaid rent to exclude rent due on August 01, 2020. Thus, the Notice is for unpaid rent and late fee due in September, October, November and December 2020.

I find the Notice is in accordance with section 52 of the Act, as it is signed and dated by the landlord, gives the address of the rental unit, states the effective date and grounds for ending the tenancy 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, December 15, 2020.

As the landlord was successful in this application, 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 deposit held by the landlord. I order the landlord to retain the \$575.00 security deposit in partial satisfaction of the total monetary award.

In summary:

Reference	Amount \$
Unpaid rent and late fee	8,500.00
Filing fee	100.00
Subtotal	8,600.00
Deposit (subtract)	575.00
Total	8,025.00

I warn the tenants that they 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 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, 38 and 72 of the Act, I authorize the landlord to retain the \$575.00 security deposit and grant the landlord a monetary order in the amount of \$8,025.00.

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: April 16, 2021

Residential Tenancy Branch