



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR-DR, MNR-DR, FFL**

Introduction

This hearing originated as a Direct Request proceeding and was adjourned to a participatory hearing in an Interim Decision dated August 19, 2021. This Decision should be read in conjunction with the August 19, 2021 Interim Decision. 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.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord's agent (the "agent") 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 agent and I were the only ones who had called into this teleconference.

The Interim Decision states:

Notices of Reconvened Hearing are enclosed with this interim decision. The applicant must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon the tenant within three (3) days of receiving this decision in accordance with section 89 of the Act.

The agent testified that the tenant was served with the above documents on August 20, 2021 via registered mail. A registered mail receipt stating same was entered into evidence. I find that the above documents were served in accordance with the *Act*.

The agent confirmed the landlord's email addresses for service of this decision and orders.

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 \$7,000.00. Since filing for dispute resolution, the landlord testified that the amount of rent and damages for overholding owed by the tenant has increased because no rent or use and occupancy money has been paid from April 2021 to the present day. The agent testified that the landlord sought to amend their claim to includes damages up to the present date.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent and use and occupancy damages for overholding, 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 and use and occupancy damages for overholding in the amount of \$14,395.16

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 tenants, pursuant to section 72 of the *Act*?

Background and Evidence

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

The agent provided the following undisputed testimony. This tenancy began on May 1, 2019 and is currently ongoing. Monthly rent in the amount of \$1,750.00 is payable on the first day of each month. A security deposit of \$1,750.00 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 agent testified that the tenant has not paid any rent for April 2021 to the present date. The agent testified that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent via registered mail on May 21, 2021 (the "10 Day Notice"). The landlord entered into evidence a registered mail receipt from Canada Post stating same.

The 10 Day Notice dated May 20, 2021 was entered into evidence and states that the tenant failed to pay rent in the amount of \$3,500.00 that was due on May 1, 2021. The 10 Day Notice states that the tenant must move out of the subject rental property by June 5, 2021. The agent testified that the tenant has not moved out in accordance with the 10 Day Notice and has not filed to dispute it.

The landlord entered into evidence bank deposit details from August 31, 2020 to August 18, 2021. The deposit details show that the tenant paid rent up until March of 2021 but no rent payments have been made from April to August 18, 2021.

Analysis

Based on the registered mail receipt dated May 21, 2021 and the agent's testimony, I find that the tenant was served with the 10 Day Notice via registered mail in accordance with section 88 of the *Act*. I find that the tenant was deemed to have received the 10 Day Notice on May 26, 2021 in accordance with section 90 of the *Act*.

Based on the undisputed testimony of the agent, I find that rent in the amount of \$1,750.00 was due on the first day of each month.

Based on the undisputed testimony of the agent and the bank details entered into evidence, I find that the tenant failed to pay the rent stated as outstanding on the 10 Day Notice 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 10 Day Notice, that being June 5, 2021.

In this case, this required the tenant to vacate the premises by June 5, 2021, as that has not occurred, I find that the landlord is entitled to a 2-day Order of Possession. The landlords 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 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

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 \$1,750.00 on the first day of each month. Based on the testimony of the landlords and the bank details entered into evidence, I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlord rent from April 1, 2021 to June 5, 2021 as follows:

April to May 2021: **\$3,500.00**

June 1- June 5, 2021: \$1,750.00 (rent) / 30 (days in June) = \$58.3333 (daily rate)
* 5 (days of tenancy in June 2021) = **\$291.67**

Total: \$3,791.67

Residential Tenancy Policy Guideline #3 states:

If a tenant continues to occupy the rental unit or manufactured home site after the tenancy has ended (overholds), then the tenant will be liable to pay compensation for the period that they overhold pursuant to section 57(3) of the RTA (section 50(3) of the MHPTA). This includes compensation for the use and occupancy of the unit or site on a per diem basis until the landlord recovers possession of the premises.

As this tenancy ended on June 5, 2021 and the tenant has not yet moved out, I find that the tenant has overheld the subject rental property from June 6, 2021 to the present date. Pursuant to section 57(3) of the *Act* I find that the tenant is required to compensate the landlord for use and occupancy of the subject rental property pursuant to the following calculation:

June 6- June 30, 2021: $\$1,750.00$ (rent) / 30 (days in June) = $\$58.3333$ (daily rate) * 25 (days tenant overheld in June 2021) = **$\$1,458.33$**

July – November 2021: **$\$8,750.00$**

December 1- December 7, 2021: $\$1,750.00$ (rent) / 31 (days in December) = $\$56.4516$ (daily rate) * 7 (days tenant overheld in December 2021 at date of hearing) = **$\$395.16$**

Total: $\$10,603.49$

If the tenant overholds the subject rental property past December 7, 2021, the landlord is at liberty to file another claim for damages for overholding.

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*.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of $\$1,750.00$.

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 from April to June 5, 2021	\$3,791.67
Damages for overholding June 6 to December 7, 2021	\$10,603.49
Filing Fee	\$100.00
Less security deposit	-\$1,750.00
TOTAL	\$12,745.16

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: December 07, 2021

Residential Tenancy Branch