



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

This hearing originated as a Direct Request and was adjourned to this participatory hearing in an Interim Decision dated July 20, 2022. 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 tenants, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open for more than 10 minutes in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. 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.

The landlord was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The landlord testified that he was not recording this dispute resolution hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The landlord confirmed his email address for service of this Decision.

Preliminary Issue- Service

The landlord testified that the tenant was served with his Notice of Dispute Resolution package via registered mail. The landlord entered into evidence a registered mail receipt dated July 20, 2022. The landlord testified that the above package was returned to sender because the tenant did not pick it up. I find that the tenant was deemed served with the landlord's Notice of Dispute Resolution package on July 25, 2022, five days after it was mailed, in accordance with section 89 and 90 of the *Act*. Failure to pick up registered mail does not override the deeming provision found in section 90 of the *Act*.

Preliminary Issue- Amendment

The landlord testified that the amount of unpaid rent and utilities owed by the tenant have increased since this application for dispute resolution was filed. The landlord testified that he is seeking all the outstanding rent and additional utilities, not just what was owed at the time of filing.

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 \$2,000.00 and unpaid utilities in the amount of \$662.00.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent, some of which may be categorized as damages for overholding, and all additional utilities, 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 damages for overholding, in the amount of \$7,000.00 for May to November 2022 and additional utilities in the amount of \$868.45.

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 and utilities, pursuant to sections 26 and 67 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, 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 landlord, not all details of the landlord's 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 that this tenancy began on November 1, 2020 and that approximately three weeks ago, the tenant moved most of his belongings out of the subject rental property but is still coming and going from the subject rental property. The landlord testified that the tenant told him that the only way to get him out is with a bailiff. The landlord testified that he does not have possession of the subject rental property.

The landlord entered into evidence a tenancy agreement between the landlord and the tenant. The landlord's first name is spelt slightly differently on the tenancy agreement, the landlord testified that the spelling of his first name is correct on this application for dispute resolution. The tenancy agreement is signed by both parties and states that rent in the amount of \$1,000.00 is due on the first day of each month and that the tenant owes $\frac{1}{4}$ of all utilities. The address of the subject rental property on the tenancy agreement does not state the subject rental city and does not contain the address prefix stated on this application for dispute resolution. The landlord confirmed that the address listed on this application for dispute resolution is correct.

The landlord testified that the tenant has not paid any rent for the months of May to November 2022. The landlord testified that he posted a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on the tenant's door but could not recall on what date. The landlord entered into evidence a witnessed proof of service form which states that the landlord posted the Notice on the tenant's door on June 2, 2022.

The Notice was entered into evidence, is signed by the landlord, is dated June 2, 2022 gives the address of the rental unit, states that the effective date of the notice is June 15, 2022, is in the approved form, #RTB-30, and states the following grounds for ending the tenancy:

You have failed to pay rent in the amount of \$2,000.00 due on June 1, 2022

You have failed to pay utilities in the amount of \$662.00 following written demand on June 1, 2022.

The landlord entered into evidence a text message to the tenant dated June 1, 2022 which states:

Hello [tenant] your bills this month are \$154.00 plus the \$1508 that is in arrears

On June 1, 2022 the tenant sent the following responding text message:

Rememevr when insent younthisnbacknin march and you agreed to get this fixed?

Oh, well yeah you hadn't responded to my last 2 [message cut off]

[reproduced as written]

The tenant did not file an application with the Residential Tenancy Branch to dispute the Notice.

The landlord testified that he is seeking $\frac{1}{4}$ of the gas bills from the billing period starting December 15, 2021 to the billing period ending September 1, 2022 because the tenant did not pay his $\frac{1}{4}$ share for that time period. Gas bills setting out the billing period and bill totals were entered into evidence as follows:

| Billing Period | Bill Total | $\frac{1}{4}$ of Bill Total |
|--------------------------------------|------------|-----------------------------|
| December 15, 2021 – January 20, 2022 | \$70.35 | \$17.59 |

| | | |
|---------------------------------------|----------|-----------------|
| January 20, 2022 – February 16, 2022 | \$192.19 | \$48.05 |
| February 16, 2022 – March 18, 2022 | \$128.65 | \$32.16 |
| May 18, 2022 – June 16, 2022 | \$120.64 | \$30.16 |
| June 16, 2022 – July 18, 2022 | \$70.15 | \$17.54 |
| July 18, 2022 – August 16, 2022 | \$79.16 | \$19.79 |
| August 16, 2022 to September 19, 2022 | \$91.06 | \$22.77 |
| Total | | \$188.06 |

I note that the gas bill for the billing period April 19, 2022 to May 18, 2022 was not entered into evidence.

The landlord testified that he is seeking $\frac{1}{4}$ of the electricity bills from January 2022 to September 2022. The landlord entered into evidence an “Electric Billing History” printout from BC Hydro which sets out the read date and total charges as follows:

| Read Date | Total Charges | $\frac{1}{4}$ of Total Charges |
|------------------|----------------------|--|
| January 18, 2022 | \$847.28 | \$211.82 |
| March 18, 2022 | \$677.72 | \$169.43 |
| May 17, 2022 | \$505.22 | \$126.31 |
| Total | | \$507.56 |

The landlord entered into evidence an electricity bill for May 18, 2022 to July 18, 2022 in the amount of \$347.94. $\frac{1}{4}$ of the above bill is \$86.99. The landlord entered into evidence a bill summary in the amount of \$343.35 due on October 12, 2022. $\frac{1}{4}$ of the above bill summary is \$85.84. The landlord testified that the bill summary is for the billing period from May 18, 2022 to July 18, 2022

The landlord testified that the tenant did not pay their $\frac{1}{4}$ share of the above electricity charges. The total $\frac{1}{4}$ share of all the above listed receipt, bill summary and billing history is \$680.39.

Analysis

I accept the landlord’s undisputed testimony that his name and the address of the subject rental property listed on this application for dispute resolution are correct.

Based on the witnessed proof of service document, I find that the tenant was deemed served with the Notice on June 5, 2022, three days after its posting, pursuant to section 88 and 90 of the *Act*.

Based on the undisputed testimony of the landlord, I find that while the tenant has moved most of his belongings out of the subject rental property, the tenant has not relinquished possession to the landlord.

Based on the undisputed testimony of the landlord, I find that the tenant has not paid any rent or damages for overholding for the months of May to November 2022.

Based on the undisputed testimony of the landlord, I find that the tenant failed to pay the outstanding rent stated on the Notice within five days of receiving the Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 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 notice.

In this case, this required the tenant to vacate the premises by June 15, 2022, as that has not occurred, I find that the landlord is entitled to a 2-day Order of Possession. The landlord 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 \$1,000.00 on the first day of each month. Based on the testimony of the landlord and the Notice 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 \$7,000.00 for unpaid rent and damages for overholding from May 2022 to November 2022.

Based on the tenancy agreement entered into evidence and the landlord's undisputed testimony, I find that the tenant is required to pay $\frac{1}{4}$ of all utility bills. I accept the landlord's undisputed testimony that the tenant has not paid his $\frac{1}{4}$ share of all utility bills, summaries, and billing histories entered into evidence. I find that in failing to pay the utility bills the tenant breached the tenancy agreement which resulted in the landlord suffering a loss. I find that the landlord has proved the value of the loss caused by that

breach by way of the bills, summaries and billing history entered into evidence. I find that no mitigation issues are present. Pursuant to section 67 of the *Act*, I find that the landlord is entitled to recover $\frac{1}{4}$ of all utility bills, summaries and billing histories entered into evidence in the amount of \$868.45.

As the landlord was successful in his 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*.

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 in the amount of \$7,968.45.

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: November 25, 2022

Residential Tenancy Branch