



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ARIA REAL ESTATE COMPANY
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNRL-S, 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 One Month Notice to End Tenancy for Cause (the Notice), pursuant to sections 47 and 55;
- a monetary order for unpaid rent, pursuant to section 26;
- an authorization to retain the security deposit (the deposit), under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

Tenant SJ (the tenant) and the respondent attended the hearing. The respondent was represented by SJ (the landlord). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

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 \$5,000.00."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

Preliminary Issue – Vacant Rental Unit

Both parties agreed the tenant vacated the unit on August 31, 2022.

The application for an order of possession is moot since the tenancy has ended and the landlord has possession of the rental unit.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for an order of possession.

Preliminary Issue – amendment

The landlord's application for a monetary order for unpaid rent states:

Tenant has not paid rent since June 2022. Brianne paid partial rent of \$680 in June 2022. Arrears – June 2022: \$1,000 July 2022: \$1680 August 2022: \$1680 Total arrears as of August 2 2022: \$4,360.

The landlord affirmed she served the tenant a monetary order worksheet in person on December 01, 2022 claiming for a monetary compensation for damages caused by the tenant. The landlord did not serve the Residential Tenancy Branch form 42L (the amendment form).

Rule of Procedure 4.1 states:

An applicant may amend a claim by:

- completing an Amendment to an Application for Dispute Resolution form; and
- filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence on the Dispute Access site or with the Residential Tenancy Branch directly or through a Service BC Office.

The amendment form states:

How to use this form:

[...]

Provide a copy of this completed form to every respondent by registered mail, in person or to an email address provided for service.

I do not accept the landlord's request to amend the application, as the landlord did not serve the amendment form.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for unpaid rent?
2. an authorization to retain the deposit?
3. 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 parties, 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 parties; it is the landlord's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on January 01 and ended on August 31, 2022. Monthly rent was \$1,680.00, due on the first day of the month. The landlord collected and holds a deposit in the amount of \$500.00.

The tenant did not serve the forwarding address.

Both parties agreed the tenant paid rent in the amount of \$680.00 in June and did not pay rent in July and August 2022. The tenant's total rental arrears are \$4,360.00 for the balance of June, July and August 2022.

The tenant affirmed she did not pay rent in June because she was facing financial difficulties and the landlord informed her that she would evict the tenant on June 24, 2022. The tenant believes the landlord was unprofessional and the tenant did not feel safe in the rental unit.

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.

I accept the uncontested testimony that the tenant agreed to pay monthly rent in the amount of \$1,680.00, the tenant paid \$680.00 in June and did not pay rent in July and August 2022. The tenant's rental arrears are \$4,360.00 for the balance of June, July and August 2022.

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 award the landlord \$4,360.00

Filing fee and deposit

As the landlord was successful in the 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, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, 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 \$500.00 deposit in partial satisfaction of the monetary award.

In summary:

Item	Amount \$
Balance of June 2022 rent	1,000.00
Unpaid rent for July and August 2022 (1,680.00 x 2 months)	3,360.00
Filing fee	100.00
Subtotal	4,460.00
Deposits (subtract)	500.00
Total:	3,960.00

Conclusion

Per sections 26 and 72 of the Act, I authorize the landlord to retain the \$500.00 deposit and award the landlord \$3,960.00. 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 23, 2022

Residential Tenancy Branch