



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding KMK DEVELOPMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

While the landlord's agent, MM ("landlord"), attended the hearing by way of conference call, the tenant did not. I waited until 1:40 p.m. to enable the tenant to participate in this scheduled hearing for 1:30 p.m. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. The landlord confirmed that they understood.

The landlord testified that the tenant was served with the hearing and dispute resolution package by way of registered mail on November 16, 2022. The landlord provided the tracking number in their evidentiary materials, which is noted on the cover page of this decision. I am satisfied that the landlord had provided sufficient proof of service to support that the tenant was properly served with the landlord's application and evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant deemed served with the landlord's application and evidence on November 21, 2022, 5 days after mailing. The tenant did not submit any written evidence for this hearing.

At the beginning of the hearing, the landlord confirmed that the tenant had moved out on March 3, 2022, and that they no longer required an Order of Possession. Accordingly, this portion of the landlord's application was cancelled.

Although the landlord had applied for a monetary Order of \$6,000.00 in their initial claim for unpaid rent, since they applied another \$7,200.00 in rent has become owing that was not included in the original application. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the landlord's request to amend their original application from \$6,000.00 to \$13,200.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issue(s) to be Decided

Is the landlord entitled to monetary order for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on November 1, 2019, with monthly rent set at \$1,200.00, payable on the first of the month. The landlord holds a security deposit of \$600.00 for this tenancy.

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on September 10, 2022 for failing to pay \$6,000.00 in unpaid rent. The landlord testified that the tenant moved out on March 3, 2023 and has not paid any rent since the 10 Day Notice was served. The landlord is requesting a monetary order for unpaid rent, plus recovery of the filing fee.

Analysis

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent*

I am satisfied that the tenant failed to pay rent from May 2022 through to March 2023, and did not have the right to withhold any rent for this period. Accordingly, I allow the landlord a monetary order for unpaid rent for this period.

I find that this Application has merit and the landlord is entitled to recover the fee for filing fee paid for this Application.

A security deposit of \$600.00 is being held for this tenancy. In accordance with the offsetting provisions of section 72 of the *Act*, I order that the landlord retain the tenant's security deposit plus applicable interest in satisfaction of the monetary award granted to the landlord. As per the RTB Online Interest Tool found at <http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html>, over the period of this tenancy, \$2.53 is payable as interest on the tenant's security deposit from November 1, 2019, until the date of this decision, March 20, 2023.

Conclusion

I issue a Monetary Order in the amount of **\$12,697.47** in the landlord's favour for the monetary orders granted in the table below:

Item	Amount
Unpaid Rent-May 2022-March 2023	\$13,200.00
Filing Fee	100.00
Less Security Deposit Held plus applicable interest	-602.53
Total Monetary Order	\$12,697.47

The landlord is provided with this Order in the above terms and the tenant must be served with a copy of 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: March 20, 2023