



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, 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 landlords applied for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*; and
- recovery of the filing fee, pursuant to section 72 of the *Act*.

Although I left the teleconference hearing connection open until 10:00 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M., the tenant did not attend this hearing. The landlords RD and GD attended the hearing and were 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 landlords and I were the only ones who had called into this teleconference.

I accept the landlord RD (the landlord) testimony that the tenant was served with the Notice of Hearing and evidence (the Materials) by registered mail on December 21, 2019, in accordance with section 89 of the *Act* (the tracking number is reproduced 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 I find the tenant is deemed to have received the Materials on December 26, 2019.

Preliminary Issue – Amendments of Claim

At the hearing the tenant sought to amend her application to include a claim for January 2020 rent which she testified remains outstanding. She requested to increase her monetary claim to \$1,500.00.

I find that the increase in the landlord's monetary claim should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules and section 64 of the Act, I order that the landlords' application be amended to include a claim for January 2020 rent.

During the hearing the landlord clarified that the unit address is the basement of the provided address. Pursuant to section 64 of the Act, I amend the landlords' application for dispute resolution to change the tenancy address to basement of the address provided.

Issues to be Decided

Are the landlords entitled to:

- an Order of Possession for non-payment of rent?
- a Monetary Order for unpaid rent in the amount of \$1,500.00; and
- authorization to recover the filing fee for this application from the tenant?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claim and my findings are set out below. I explained rule 7.4 to the parties; it is their obligation to present the evidence to substantiate their application.

The landlord testified the parties entered into a written tenancy agreement starting November 01, 2018. Although the agreement lists monthly rent as \$1,000.00, the landlord stated rent was reduced to \$750.00 and was due on the first day of the month. The landlords currently hold in trust the tenant's security deposit of \$500.00.

The landlord testified the 10 day Notice to End Tenancy (the Notice) was posted on the tenant's door on December 08, 2019, with an effective date of December 18, 2019. The landlord affirmed the Notice was corrected with white-out before it was served and he

did not alter the Notice after serving it. The tenant has not paid any rent since the Notice was issued and has not vacated the unit.

The landlord submitted the Notice and a photography of it posted on the tenant's door.

Analysis

I have reviewed all the documentary evidence and find the tenant was deemed served with the Notice on December 11, 2019 in accordance with sections 89 (2)(a) and 90(c) of the Act. I find the Notice is valid pursuant to section 52 of the Act. The tenant has not disputed the Notice and is conclusively presumed under sections 46(5) and 53(2) of the Act to have accepted that the tenancy ended on the corrected effective date of the Notice, December 21, 2019.

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement.

I accept the landlord's uncontroverted evidence the tenant has been in arrears since December 2019 and the total amount owing is \$1,500.00 for December 2019 and January 2020.

As explained in section D.2 of Policy Guideline #17, the Residential Tenancy 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 tenant's security deposit of \$500.00 in partial satisfaction of the unpaid rent.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

In summary:

Landlord's monetary claim for unpaid rent	\$1,500.00
Minus tenants' security deposit	-\$500.00
Landlord's filing fee	\$100.00
Total monetary award	\$1,100.00

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this order** 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.

Pursuant to sections 67 and 72 of the *Act*, I authorize the landlords to retain the tenant's security deposit of \$500.00 in partial satisfaction of unpaid rent and grant the landlords a Monetary order in the amount of \$1,100.00.

The landlords are 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: January 14, 2020

Residential Tenancy Branch