



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, OPR, OPN, FFL, MNRL-S

Introduction

This hearing dealt with the Landlord's Application filed under the *Residential Tenancy Act*, (the "Act"), for an order of possession to enforce 10-Day Notice for Unpaid Rent, issued on January 3, 2020, for an order of possession to enforce the Tenants' Notice to End tenancy dated January 2, 2020, for a monetary order for unpaid rent or utilities, for a monetary order for compensation for damage caused by the tenant, their pets or guests to the unit, for permission to retain the security deposit and pet damage deposit for this tenancy, and to recover the cost of filing the application. The matter was set for a conference call.

The Landlord and the Property Manager attended the hearing (the "Landlord") and were both affirmed to be truthful in their testimony. As the Tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the Act and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified the Application for Dispute Resolution and Notice of Hearing had been sent to the Tenants by registered mail on January 20, 2020. Section 90 of the Act determines that a document served in this manner is deemed to have been received five days later. I find that the Tenants have been duly served in accordance with the Act.

The Landlord was provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matter – Amendments to Application

At the outset of the hearing, it was noted that the Landlord had submitted two amendments to the application. The first was submitted on January 31, 2020, requesting to increase the monetary claim from \$5,825.00 to \$8,815.00. The second was submitted on March 3, 2020, requesting to increase the monetary claim from \$8,815.00 to 14,180.03.

The Landlord testified that the amendment request had been sent to the Tenants via email, as the Tenants had refused to provide them with a forwarding address. The Landlord testified that a substituted service application had been submitted to the Residential Tenancy Branch on February 11, 2020 and that they had received approval for email service on February 18, 2020.

Section 3.4 of the *Residential Tenancy Branch Rules of Procedure* states the following:

3.4 If a respondent avoids service

If a respondent appears to be avoiding service or cannot be found, the applicant may apply to the Residential Tenancy Branch directly or through a Service BC Office for an order for substituted service.

An application for substituted service must show that the applicant made reasonable attempts to serve the respondent or provide evidence that shows the other party is unlikely to receive material if served according to the Act.

An application for substituted service that is made at the hearing may result in an adjournment.

I have reviewed the written decision from the Substituted Service Proceedings and I find that the decision approved the service of evidence related to the application by email. However, I find that the Landlord did not apply for nor were they awarded the authority to serve amendments to their application by email.

Consequently, I find that the Landlord has not served the requests for amendments to this application to increase the monetary claim, to the Respondents in accordance with the Act, and therefore I dismissed both amendment requests with leave to reapply.

Preliminary Matter – Withdrawal of claimed Items

During these proceedings the Landlord testified that the Tenants had already moved out of the rental unit and that an order of possession was no longer required.

The Landlord also requested to withdraw his claim for damages to the rental unit in the amount of \$1,000.00.

As the Tenants did not attend these proceedings to object to the Landlords' request, I grant the Landlord request to withdraw the two above noted items from this application, with leave to reapply. I will proceed in this hearing with the Landlords remain claim for monetary compensation for unpaid rent, for liquidated damages, for permission to retain the security deposit and pet damage deposit and the recovery of the filing fee for this application.

Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to a monetary order for compensation?
- Is the Landlord entitled to retain the security and pet damage deposits?
- Is the Landlord entitled to recover the filing fee paid for this application?

Background and Evidence

The Landlord testified that the tenancy began on March 15, 2019, as a fixed term tenancy ending on May 30, 2020; rent in the amount of \$2,990.00 is to be paid by the first day of each month and that the Tenants had paid a \$1495.00 security deposit and a \$1000.00 pet damage deposit (the Deposits) at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that Tenants served Notice to end their tenancy to him on January 2, 2020. The Notice informed the Landlord that the Tenants would be vacating

the rental unit as of January 31, 2020. The Landlord submitted a copy of the Tenants Notice to end tenancy into documentary evidence.

The Landlord testified that they served the Tenants with the 10-Day Notice to end tenancy for Unpaid Rent, by posting it to the front door of the rental unit on January 3, 2020, with an effective date of January 16, 2020. The 10-Day Notice listed an unpaid rent amount of \$3,305.00, consisting of \$315.00 for December 2019 and \$2,990.00 for January 2020. The Notice informed the Tenants of the right to dispute the Notice or pay the outstanding rent within five days after receiving it. The Notice also informed the Tenants that if an application to dispute the Notice or payment of the outstanding rent in full is not made within five days, the tenant is presumed to have accepted the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord confirmed that the Tenants did move out on of January 31, 2020, and that the Tenants had not paid the outstanding rent for December 2019 and January 2020 as indicated on the Notice to End Tenancy for Unpaid Rent. The Landlord testified that the rental unit was advertised to locate a new renter for the unit, as January 10, 2020. However, they were not able to secure a new tenant until March 15, 2020. The Landlord submitted copies of the advertisements for the rental unit into documentary evidence. The Landlord also testified that it cost \$1,450.00 in associated fees and expenses to secure a new renter for the rental unit.

The Landlord is requesting a Monetary Order for the unpaid rent for December 2019, January 2020, as well as for February 2020, and ½ a month rent for March 2020. The Landlord is also requesting a Monetary Order for \$1,495.00, the agreed amount for liquidated damages included in the tenancy agreement. The Landlord submitted a copy of the tenancy agreement for into documentary evidence.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the parties entered into a fourteen month and sixteen-day fixed term tenancy, beginning on March 15, 2019, in accordance with the *Act*. I also accept the undisputed testimony and documentary evidence of the Landlord that the Tenants ended their tenancy early and moved out of the rental unit on January 31, 2020.

I also find that the Landlord issued a 10-Day Notice for Unpaid Rent, on January 3, 2020. Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

Landlord's notice: non-payment of rent

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

Pursuant to section 90 of the *Act*, I find that the Tenants were deemed to have received the Notice to End Tenancy for Unpaid rent on January 6, 2020. Accordingly, I find that the Tenants had until January 13, 2020, to either pay the outstanding rent as indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution. In this case, I find that the Tenants did neither and are therefore conclusively presumed to have accepted the tenancy ended on the effective date of the Notice and that they owed the outstanding rent as indicated on the notice. Accordingly, I award the Landlord \$3,305.00, for the recovery of the unpaid rent for December 2019 and January 2020.

I also accept the undisputed testimony of the Landlord, that they were unable to secure a new renter for the rental unit March 15, 2020. As this tenancy agreement was for a fixed term, ending May 30, 2020, I find that the Tenants are responsible for the Landlord's loss of rental income for the period between February 1, 2020 to March 14, 2020, due to the Tenants ending the tenancy early. I award the Landlord the rent for February 2020, in the amount of \$2,990.00 and a per diem for the first 14 days of March 2020, in the amount of \$1350.30.

Monthly Rent	\$2,990.00
Days in Month	31
Daily Rate	\$96.45
Rent Days Sue	14
Total due	\$1,350.30

Additionally, I have reviewed the tenancy agreement and the 5-page tenancy addendum and find that this tenancy agreement contained a liquidated damages clause. As I have previously found that the Tenants breached their tenancy agreement due to non payment of rent and ending the tenancy early, I find that the Landlord is entitled to enforce the liquidated damages term in this tenancy agreement. I accept the undisputed testimony of the Landlord that it cost them \$1,495.00 in associated costs to re-rent the rental unit. Therefore, I grant the Landlord a monetary award of \$1,495.00 in liquidated damages.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$6,745.30; comprised of, \$315.00 for the outstanding December 2019 rent, \$2,990.00 for the outstanding January 2020 rent, \$2,990.00 for the loss of rental income for February 2020, \$1350.30 for the loss of rental income for March 2020, \$1,495.00 in liquidated damages, and \$100.00 for the recovery of the filing fee, less the \$1,495.00 security deposit and \$1000.00 pet damage deposit the Landlord is holding for this tenancy.

December 2019 Rent	\$315.00
January 2020 Rent	\$2,990.00
February 2020 Rent	\$2,990.00
March 1 st – 14 th 2020 Rent	\$1,350.30
Liquidated Damages	\$1,495.00
Return of Filing Fee	\$100.00
Security Deposit	-\$1,495.00
Pet Damage Deposit	-\$1,000.00
Awarded to Landlord	\$6,745.30

Conclusion

I find for the Landlord under sections 67 and 72 of the Act and grant the Landlord a **Monetary Order** in the amount of **\$6,745.30**. The Landlord is provided with this Order in the above terms, and the Tenants must be served with this Order as soon as possible. Should the Tenants 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 18, 2020

Residential Tenancy Branch