



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPITAL REGION HOUSING CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The landlord's agent attended the hearing. One tenant appeared.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent testified the co-tenant was served the Application for Dispute Resolution and Notice of Hearing by registered mail, which was sent on February 25, 2013, a Canada post tracking number was provided as evidence of service, the co-tenant did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant (DM) has been duly served in accordance with the Act.

Both the landlord's agent and the tenant appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

Based on the testimony of landlord's agent, I find that the tenants were served with a notice to end tenancy for non-payment of rent on February 7, 2013, by placing a copy of the document in the tenants' mail slot. The notice informed the tenants that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenants had five days to dispute the notice.

The tenants did not dispute the notice.

The tenant agreed rent for March 2013, was not paid.

The tenant testified that rent for February 2013, was paid by cash, by placing an envelope in the landlord's secured mailbox on January 30, 2013.

The landlord's agent testified that the tenants are not to leave cash in the mailbox. The landlord's agent stated the tenants have been notified that this is not an acceptable method, when paying rent by cash and the tenants are required to attend the office during business hours.

The landlord's agent testified that she and a co-worker found a ripped envelope outside by their entrance door one morning, when they were entering the building. The landlord's agent stated that she picked up the envelope assuming it was garbage and she noticed on the outside of the envelope it was marked rent for February. The landlord's agent stated inside was a letter from the tenant indicating that he had enclosed \$900.00.

The landlord's agent testified there was no evidence to suggest that the mailbox was tampered with, as it was still secured and there mail from other tenants inside the box.

The landlord's agent testified that on the outside of the envelope there was a person's signature which indicated they witness the envelope being place in the mailbox. However, when they asked the tenant to speak to this person they were told this person no longer lived in the area.

The landlord's agent testified that the she believes that the tenant is fabricating a story of stolen rent, and that he most likely placed the ripped envelope outside the door, so it would appear that their mailbox was robbed.

Analysis

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

In this case, the tenants were served with a notice to end tenancy for unpaid rent for February 2013. The tenants did not did not apply to dispute the Notice and are

therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

The evidence of the tenant was that rent was paid for February 2013, by placing cash in an envelope and then placing the envelope into the landlord's mailbox, which was secured.

The evidence of the landlord's agent was that the tenants are not to leave cash in the mailbox and are required to attend the office during business hours when making cash payments. The evidence of the landlord's agent was that there was no sign that someone had tampered with the mailbox, as it was secure and there was mail inside the box from other tenants.

In this case, I prefer the evidence of the landlord's agent over the tenant for the following reasons:

- The tenant claims to have put cash in the landlord's mailbox, which is not the method of payment approved of by the landlord and tenants are notified cash payments are to be made at the office.
- The person that was an alleged witness for the tenant was unavailable to provide testimony and did not submit any documentary evidence, such as a letter to support the tenant's claim.
- The mailbox was found to contain other envelopes, which if robbed as alleged, it would be highly likely the person would have taken the contents of the mailbox.
- There was no sign that the mailbox was tampered with and was secured when inspected by the landlord's agent.

As a result, I find the tenant has failed to prove rent for February 2013, was paid.

The evidence of the tenant was rent for March 2013, was not paid.

Therefore, I find that the landlord has established a total monetary claim of **\$1,805.00** comprised of unpaid rent for February, March 2013 and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the deposit and interest of **\$414.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$1,391.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

I find that the landlord is entitled to an order of possession effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The tenants failed to pay rent and did not file to dispute the notice to end tenancy. The tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession, and may keep the security deposit and interest in partial satisfaction of the claim. I grant a monetary order for the balance due.

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 19, 2013

Residential Tenancy Branch

