



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MND, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's application for an order of possession / a monetary order as compensation for unpaid rent / compensation for damage to the unit, site or property / retention of the security deposit / and recovery of the filing fee. The landlord attended and gave affirmed testimony.

Despite service of the application for dispute resolution and notice of hearing (the "hearing package") by way of registered mail to each tenant, neither tenant appeared. Evidence provided by the landlord includes the Canada Post tracking number for the registered mail.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from February 1, 2013 to June 30, 2013. The tenancy agreement provides that tenancy ends at the end of the fixed term and the tenants must move out of the unit. Monthly rent of \$900.00 is due and payable in advance on the first day of each month. The landlord testified that a security deposit in the total amount of \$475.00 was collected. There is no move-in condition inspection report in evidence.

Arising from rent which remained unpaid when due on March 1, 2013, the landlord issued a 10 day notice to end tenancy for unpaid rent dated March 1, 2013, which was served in-person on the tenants on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is March 10, 2013. Subsequently, on or about March 11, 2013, a rent payment was made

in the limited amount of \$450.00. No further rent has been paid and it is understood that the tenants still occupy the unit.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 53 of the Act addresses **Incorrect effective dates automatically changed**, and provides in part as follows:

53(1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent dated March 1, 2013. The tenants did not pay the full amount of outstanding rent within 5 days of receiving the notice, and did not apply to dispute the notice. The tenants 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. Accordingly, I find that the landlord has established entitlement to an **order of possession**.

As for the monetary order, I find that the landlord has established a claim of **\$1,400.00**:

\$450.00: *unpaid rent for March*

\$900.00: *unpaid rent for April*

\$50.00: *filing fee*.

I order that the landlord retain the security deposit of **\$475.00**, and I grant the landlord a **monetary order** under section 67 of the Act for the balance owed of **\$925.00** (\$1,400.00 - \$475.00).

I find that the landlord's application for compensation reflecting unpaid rent / loss of rental income for May and June 2013 is premature, and it is therefore dismissed with leave to reapply.

Further, as the tenants continue to still occupy the unit, and the landlord has not presently incurred any costs associated with cleaning and painting which may later arise, this aspect of the application is also hereby dismissed with leave to reapply.

Finally, for the information of the parties, attention is drawn to the following legislation:

Residential Tenancy Act

Section 88: **How to give or serve documents generally**

Section 89: **Special rules for certain documents**

Section 90: **When documents are considered to have been received**

Residential Tenancy Regulation

Part 5: **Abandonment of Personal Property** (sections 24 to 30)

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenants. This order must be served on the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$925.00**. This order may be served on the tenants, filed in the Small Claims 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: April 24, 2013

Residential Tenancy Branch

