



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding The Heritage House Apartments  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

**OPR, MNR, FF**

### **Introduction**

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on October 3, 2013 copies of the Application for Dispute Resolution and Notice of Hearing were sent to each tenant via registered mail at the address noted on the Application. A Canada Post tracking number was provided as evidence of service to each tenant. The landlord said that on October 11, 2013 the tenants vacated the unit and left the keys in the rent payment mail slot.

The registered mail was returned by Canada Post marked as undeliverable.

I find that the tenants were residing in the unit on the 5<sup>th</sup> day after mailing; the landlord was certain they had not vacated prior to October 11, 2013. Therefore, I find that these documents are deemed to have been served on the 5<sup>th</sup> day after mailing, in accordance with section 89 and 90 of the Act; however neither tenant appeared at the hearing. Refusal to retrieve registered mail does not allow a party to avoid service.

### **Preliminary Matters**

The landlord said that effective October 11, 2013 he had possession of the rental unit. An Order of possession is not required.

### **Issue(s) to be Decided**

Is the landlord entitled to a monetary Order for unpaid rent?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on August 1, 2012; rent was increased to \$800.00 per month, due on the 1<sup>st</sup> day of each month. A tenancy agreement was signed; a copy was not supplied as evidence. A security deposit in the sum of \$387.50 was paid.

On October 11, 2013 the tenants left the keys to the rental unit in the rent payment mail slot; the landlord then took possession of the rental unit. A written forwarding address has not been supplied by the tenants. The landlord had issued a 1 month Notice to end tenancy for cause on August 13, 2013; the effective date of the Notice was September 30, 2013.

On October 3, 2013 the landlord applied for dispute resolution.

The landlord testified that the tenants last paid rent in July 2013. The landlord has claimed compensation for unpaid August, September, October and November 2013 rent in the sum of \$3,200.00.

The landlord confirmed that they cleaned the unit and advertised in October 2013. The unit was not rented in November 2013. The landlord said it was difficult as the tenants left furniture and storage was an issue.

### Analysis

In the absence of evidence to the contrary, I find that the tenants failed to pay rent owed from August to October, 2013 inclusive, in the sum of \$2,400.00 and that the landlord is entitled to compensation in that amount. The landlord obtained possession of the unit once the tenants received the Notice of hearing package, within 3 days of deemed service of the hearing documents the tenants had vacated the unit.

In relation to the claim for the loss of rent revenue for the month of November, I find that there is an absence of evidence to show that the unit could not have been prepared for rent effective November 1, 2013. While storage of furniture may have been a problem, the landlord must mitigate the loss claimed by making efforts to rent the unit as quickly as possible. The Regulation sets out requirements for abandoned property; the landlord provided no evidence that a significant amount of items were left in the unit or that those items were valued at more than \$500.00. The tenants breached the Act by not vacating on the effective date of the Notice; however, this does not confer an automatic right of compensation to the landlord.

Therefore, in the absence of evidence that supports the delay in making the unit ready to rent during the 3 weeks of October when the landlord had possession of the unit I find that the claim for unpaid November 2013 rent is dismissed.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution..

I find that the landlord has established a monetary claim, in the amount of \$2,450.00, which is comprised of unpaid rent from August to October 2013 inclusive and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order in the sum of \$2,450.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

### Conclusion

The landlord is entitled to a monetary Order for unpaid rent.

The landlord is entitled to filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 14, 2013

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Residential Tenancy Branch

