



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on November 26, 2014, by the Landlord to obtain an Order of Possession for unpaid rent or utilities and a Monetary Order for: unpaid rent or utilities; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

The Landlord provided documentary evidence that each Tenant was served notice of this application and this hearing by registered mail on November 27, 2014. Canada Post tracking information confirms that Canada Post attempted delivery of the package on December 2, 2014 and that a notice card was left that date to advise the tenant they could pick up the registered mail. The tracking information also confirms Canada Post gave a second and final notice on December 8, 2014 that the registered mail was available for pick up.

As of December 20, 2014 the Canada Post tracking information confirms that the Tenants still did not pick up the registered mail. Based on this information, I find that each Tenant was provided with 3 opportunities to receive the registered mail and they did not make an attempt to retrieve it. I find this to be a deliberate effort on the part of each Tenant to avoid service and I find the Tenants were sufficiently served with Notice of this hearing, pursuant to Section 71 of the *Act*.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord submitted evidence that the Tenant entered into a six month fixed term tenancy that began on July 1, 2014. Rent of \$840.00 is due on or before the first of each month and on June 26, 2014 the Tenants paid \$420.00 as the security deposit.

The Landlord testified that when the Tenants failed to pay their November 1, 2014 rent the Landlord posted a 10 Day Notice to the Tenant's door on November 2, 2014. The Tenants remain in the unit and have not made a payment towards rent or the past due amounts owing.

The Landlord stated that they are also seeking \$20.00 late payment fee for each month as provided in section 3(a) of the tenancy agreement.

Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenants are deemed to have received the 10 Day Notice on November 5, 2014, three days after it was posted to the door, and the effective date of the Notice is November 15, 2014.

The Tenants neither paid the rent nor disputed the Notice; therefore, the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **November 15, 2014**, and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord claimed unpaid rent of \$840.00 that was due November 1, 2014, in accordance with section 26 of the *Act* which stipulates a tenant must pay rent in accordance with the tenancy agreement. Based on the aforementioned, I award the Landlord unpaid rent for November 1, 2014, in the amount of **\$840.00**.

As noted above this tenancy ended **November 15, 2014**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit and not rent for December 2014. The Landlord will not regain possession of the unit until after service of the Order of Possession and will have to find a new tenant; therefore, I award the Landlord use and occupancy and any loss of rent for the entire period of December 1, 2014 to January 15, 2015, in the amount of **\$1,260.00** (\$840.00 + \$420.00). If the Landlord suffers additional loss they are at liberty to file another application for that loss.

The tenancy agreement provides for \$20.00 late payment fees in accordance with # 7 of the *Residential Tenancy Regulation*. The evidence supports the November 1, 2014 rent was late, as it was not paid. Therefore I find the Landlord has proven the test for loss and I approve their claim for November 2014 late fees in the amount of **\$20.00**.

As noted above, this tenancy ended November 15, 2014, in accordance with the 10 Day Notice. Provisions such as late payment fees provided in the tenancy agreement are no longer in affect once a tenancy has ended. Therefore, I find the Landlord is not entitled to claim late payment fees for December 2014, or January 2015 and the claim is dismissed, without leave to reapply.

The Landlord has succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days after service upon the Tenants**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order for **\$2,170.00** (\$840.00 + \$1,260.00 \$20.00 + \$50.00). This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia 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: December 29, 2014

Residential Tenancy Branch

