



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on February 27, 2015, by the Landlord to obtain an Order of Possession for unpaid rent or utilities and a Monetary Order for: unpaid rent or utilities; to keep the security deposit; 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 hearing was conducted via teleconference and was attended by the Landlord and the female Tenant J.L. Each party gave affirmed testimony and J.L. testified that she would be representing herself and the male Tenant, D.L., in this proceeding. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa.

The Tenant submitted that she did not receive copies of the Landlord's application, the Notice of Dispute Resolution, or the Landlord's evidence until Thursday Night (March 26, 2015). The Tenant confirmed that she has had opportunity to review the evidence which consisted of a copy of her tenancy agreement and the 10 Day Notice issued February 14, 2015.

The Landlord argued that the hearing documents and his evidence were initially sent to the Tenant via registered mail on March 02, 2015. Canada Post tracking information was provided in the Landlord's oral testimony and a copy was provided in a second evidence package that had been submitted on March 27, 2015. The Landlord stated that he resides in the upper level of the house and that he saw the Canada Post Notice sticker on the Tenants' door for several days. When the Tenants failed to pick up the registered mail the Landlord said he went to the post office and picked up the package and taped it to their door over the key hole on March 26, 2015.

The Tenant was given an opportunity to respond to the Landlord's testimony, regarding service, to which she responded "All I have to say is that I did not receive the package until last Thursday".

Section 71(2)(b) of the *Act* stipulates that the director may order that a document has been sufficiently served for the purposes of this Act on a date the director specifies.

Based on the submissions of the Landlord, I find the Landlord initially served the Tenants in accordance with section 89 of the *Act*. In addition, I find the Tenants' refusal to pick up the registered mail to be a deliberate effort to avoid service and the Landlord did what was reasonable to ensure the Tenants were notified of this proceeding, prior to the hearing. Therefore, I find the Tenants were sufficiently served with Notice of this hearing, pursuant to Section 71 of the *Act*.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

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 Tenants entered into a month to month tenancy and were given possession of the rental unit on February 1, 2015. Rent of \$700.00 was due on or before the first of each month and in February 2015 the Tenants paid \$250.00 towards the \$350.00 security deposit.

The Landlord testified that when the Tenants failed to pay their February 1, 2015, rent the Landlord posted a 10 Day Notice to the Tenant's door on February 14, 2015. The Tenants remain in the unit and have not made a payment towards rent or the past due amounts owing. The Landlord stated that he seeks an order of possession and compensation for February and March 2015 rents.

The Landlord referenced the late evidence he had submitted on March 27, 2015, noting that that evidence included copies of the written communication between himself and the Tenant. He argued that that written communication displayed a pattern of the

Tenants not paying their rent; his queries as to if the Tenants are going to vacate the rental unit; and the Tenants' acknowledgment that they had not paid rent.

The Tenant responded and confirmed that they had not paid rent. She submitted that her rent was late because of financial hardship and health reasons. The Tenant argued that the written correspondence did not display a pattern of nonpayment of rent.

The Tenant testified that she would be paying her rent in full, upon vacating the rental unit. She submitted that she was waiting to hear from her new landlord as to which date her new rental unit would be available. She stated that she wanted to be amicable and is ready to leave when her new unit is ready.

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 did not dispute receiving the 10 Day Notice; therefore, I conclude that the Tenants received the 10 Day Notice on February 17, 2015, three days after it was posted to the door, and the effective date of the Notice is **February 27, 2015**.

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, **February 27, 2015**, 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 \$700.00 that was due February 1, 2015, 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 February 1, 2015, in the amount of **\$700.00**.

As noted above this tenancy ended **February 27, 2015**, 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 March 2015. 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 month of March 2015, in the amount of **\$700.00**. If the Landlord suffers additional loss they are at liberty to file another application for that loss.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review*]

of director's decision] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the *Act*.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid Rent February 2015	\$ 700.00
Use & Occupancy & Loss of Rent March 2015	700.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,450.00
LESS: Security Deposit \$250.00 + Interest 0.00	<u>-250.00</u>
Offset amount due to the Landlord	<u>\$1,200.00</u>

Conclusion

The Landlord has been granted an Order of Possession effective **Two (2) Days after service 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 **\$1,200.00**. 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: March 30, 2015

Residential Tenancy Branch

