



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, OPR, MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- an Order of Possession for unpaid rent and/or for a breach of a material term of the tenancy pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:55 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. The landlord withdrew her application for an Order of Possession. She testified that the tenants vacated the rental unit on February 12, 2015 and, as of the date of this hearing, she testified that she has not re-rented the unit.

The landlord testified that she served the tenants with a copy of the 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") by posting it on the rental unit door on February 2, 2015. Based on the landlord's testimony and pursuant to section 88 and 90 of the *Act*, I find the tenants both deemed served on February 5, 2015, 3 days after its posting. The landlord also testified that she served both tenants with the landlord's Application for Dispute Resolution by registered mail on February 17, 2015. The landlord provided receipts and tracking numbers to evidence the mailing to each tenant individually at the forwarding address they provided on vacating the rental unit.

Residential Tenancy Policy Guideline No. 12 directs the interpretation of the *Act* regarding service of documents. "Deemed service" means that the document is presumed to have been served unless there is clear evidence to the contrary. Deemed service applies to all types of documents not personally served. In the case of registered mail, the refusal to accept or pick up the mail does not override the deemed

service provision. Service continues to be deemed after the fifth day of mailing. There is no evidence that contradicts the testimony and supporting materials provided by the landlord that claim the tenants have been served. I accept the evidence of the landlord with respect to mailing of the packages. Based on the evidence provided and pursuant to section 89 and 90 of the Act, I find the tenant deemed served with the landlord's application for dispute resolution on February 22, 2015, 5 days after its registered mailing.

Issues to be Decided

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

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This one year fixed term tenancy for a basement suite below the landlord began on May 1, 2013. The rental amount, until February 2015, was \$900.00 payable on the first of each month. The rent was due to increase in the next month. The landlord testified that she continues to hold a security deposit of \$450.00 paid by the tenants on May 1, 2013 as well as a \$50.00 "refundable key deposit" paid by the tenants on the same date.

The landlord testified, supported by the documentary evidence she submitted, that the tenancy has broken down in recent months. The police have been called on at least one occasion. The landlord testified that a dispute resolution hearing between the parties took place in January 2015 with respect to other tenancy issues beyond non-payment of rent. The landlord originally applied for an Order of Possession for unpaid rent for the month of February. The landlord testified that the tenants paid \$30.00 towards outstanding rent for January 2015. She testified that the tenants were advised that the rent and any arrears must be paid in full or she will seek to end the tenancy. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenant did not pay the February rent after receiving the 10 Day Notice on February 2, 2015. She testified that a balance of \$870.00 remains outstanding for the month of January and she sought to recover rental loss for the month of February.

The landlord testified that the tenants vacated the residence on February 12, 2015, the effective date that she provided on the 10 Day Notice. She testified that the rental unit has required extensive cleaning and some repairs before she can re-rent it. She testified that the tenants provided no formal notice to advise her that they would be vacating the rental unit. She testified that she received an email on February 12, 2015 at 7:18 p.m. advising her that the keys and a forwarding address had been left in the

rental unit for her. The landlord testified that, prior to receiving the February 12 email, the tenants had communicated, in person, by phone and by email to her that they did not wish to end the tenancy.

Analysis

I find that the landlord is entitled to receive an order for unpaid rent in January 2015 as well as rental loss for February 2015. The landlord's undisputed sworn testimony is that the tenants moved out on February 12, 2015 and that the basement suite has required considerable cleaning before the suite can be re-rented. Furthermore, despite having provided a 10 Day Notice to End Tenancy, the communications with the tenant suggested to her that there was no certainty as to whether and when the tenants would vacate the rental unit. The landlord's application is being heard in March and she testified that she does not yet have new tenants at the rental premises. I am issuing the attached monetary order that includes the landlord's application for \$1770.00 in unpaid rent for January 2015 rental arrears and February 2015 rental loss.

Based on all of the landlord's testimony with respect to clean-up requirements at the residence, lack of notice and the date of this decision, I find the landlord is entitled to a rental loss for half of March 2015.

The landlord testified that she continues to hold a security deposit of \$450.00 plus interest from May 1, 2013 to the date of this decision for this tenancy. There is no interest payable for this period. While the landlord did not apply to retain the security deposit, section 72 of the *Act* provides that an arbitrator may allow the retention of the security deposit to offset amounts owed by the tenant. In the circumstances, I will allow the landlord to retain the deposit and interest in partial satisfaction of the monetary award.

I note that the landlord testified she continues to hold a refundable \$50.00 key deposit that the landlord has not yet returned to the tenants. The landlord testified that the keys have been returned by the tenants and therefore, this deposit should be returned to the tenants.

The landlord also sought to recover the \$50.00 filing fee for the January application for dispute resolution hearing. I dismiss the landlord's application with respect to a filing fee from a previous hearing, finding that I am unable to reconsider any portion of a previous decision.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

The landlord withdrew her application for an Order of Possession.

I issue a monetary Order in favour of the landlords as follows:

Rental Arrears for January 2015	\$870.00
Rental Loss for February 2015	900.00
Rental Loss for March 2015	450.00
Less Security Deposit	-450.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$1820.00

The landlord is provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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 05, 2015

Residential Tenancy Branch

