



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding F.H.B.W. INVESTMENTS COMPANY LIMITED
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD FF

Preliminary Issues

Upon review of the Landlord's application for Dispute Resolution and their Monetary Order Worksheet the Landlord wrote the following in the details of the worksheet:

JANUARY RENT \$1375.00
FEBRUARY RENT \$1375.00
MARCH RENT \$1375.00

Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as they clearly indicated their intention of seeking to recover the payment for occupancy after the effective date of the 10 Day Notice. Therefore, I amend the Landlord's application to include the request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on March 04, 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, her Manager, and the male Tenant, C.W. The Landlord and Tenant gave affirmed testimony. The Landlord's Manager was in attendance but did not submit evidence. The Tenant signed into the hearing nine minutes late at which time I informed him of the evidence that had been presented by the Landlord prior to his attendance.

The Landlord provided affirmed testimony that each Tenant was served notice of this application and this hearing by registered mail on March 05, 2015. Canada Post tracking numbers were submitted in the Landlord's testimony. The Landlord submitted

that the package address to the female Tenant, H.B. was returned to her unclaimed. The Landlord submitted that they have security cameras in their building and they have seen the Tenant and her guests entering the rental unit building several times since this registered mail was sent to her.

Canada Post tracking information confirms that Canada Post attempted delivery of the package on March 6, 2015, and that a notice card was left that date to advise the female Tenant they could pick up the registered mail. The tracking information also confirms Canada Post gave a second and final notice on March 16, 2015 that the registered mail was available for pick up.

As of March 27, 2015, the Canada Post tracking information confirmed that the Tenant still did not pick up the registered mail and it was returned to the Landlord. Based on that information, I find that the female 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 the female Tenant to avoid service and I find she was sufficiently served with Notice of this hearing, pursuant to Section 71 of the *Act*, and I proceeded in her absence.

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. Following is a summary the testimony 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 undisputed evidence that the Tenants entered into a month to month tenancy that began on December 10, 2009. Rent of \$1,375.00 was due on or before the first of each month and on March 20, 2009 the Tenants paid \$697.50 as the security deposit.

The Landlord testified that when the Tenants failed to pay their January 1, 2015, rent the Landlord posted a 10 Day Notice to the Tenant's door on January 18, 2015 at 12:35 p.m. The Tenants remained in the unit and have made only one partial payment of \$300.00 by cheque, which has not been cashed.

The Tenant testified that after he received the 10 Day Notice in January 2015, he wrote the Landlord a notice to end his tenancy effective January 31, 2015. He argued that he vacated the rental unit by the end of January 2015; therefore, he should not be held responsible for anything the female Tenant has done.

The Landlord said that the Tenant was correct in saying he had told her that he was moving out. She said she recalled receiving a letter saying he was moving out and that she also received his key that had been returned to her.

The Landlord seeks an order of possession and compensation for January, February and March 2015 rents, as she has not cashed the \$300.00 cheque.

The male Tenant confirmed that the \$300.00 cheque would no longer clear the bank. He submitted that he would like to work out a payment plan with the Landlord for the portion that he owes.

In support of their application, the Landlord submitted documentary evidence, which included among other things, copies of: the tenancy agreement; a 10 Day Notice; proof of service document; 2 letters written by the male Tenant in February 2015; and 2 letters written by the female Tenant in February 2015.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

The *Residential Tenancy Policy Guideline # 13* defines co-tenants as two or more tenants who rent the same property under the same tenancy agreement. Co-tenants have equal rights under the tenancy and are jointly and severally responsible for any debts or damages relating to the tenancy. That means the landlord can recover the full amount owed from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

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.

The two named respondents were co-tenants to the same tenancy agreement. Therefore, once the 10 Day Notice was served, both Tenants continued to be jointly and severally liable to the tenancy until such time as the Landlord regained full vacant possession of the rental unit. Therefore, I conclude that despite the male Tenant vacating the property sometime around January 31, 2015, he was still jointly and severally liable to the tenancy.

In this case the Tenants were deemed to have received the 10 Day Notice on January 21, 2015, three days after it was posted to the door, and the effective date of the Notice was **January 31, 2015**.

The Tenants neither paid the rent in full nor disputed the Notice; therefore, the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **January 31, 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 \$1,375.00 that was due January 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 January 2015, in the amount of **\$1,375.00**.

As noted above this tenancy ended **January 31, 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 February and March 2015. The Tenants remain in possession of the rental unit and will continue to do so until after service of the Order of Possession, therefore, I award the Landlord use and occupancy for the entire months of February and March 2015, in the amount of **\$2,750.00** (2 x \$1,375.00). 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 January 2015	\$1,375.00
Use & Occupancy February & March 2015	2,750.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$4,175.00
LESS: Security Deposit \$697.50 + Interest 0.00	<u>-697.50</u>
Offset amount due to the Landlord	<u>\$3,477.50</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 **\$3,477.50**. 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: April 09, 2015

Residential Tenancy Branch

