



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BLOOMSBURY PROPERTIES LTD./RPM INC.  
VANCOUVER EVICTION SERVICES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

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

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 46 minutes. The landlords' two agents, "landlord CL" and "landlord SA," attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Landlord CL confirmed that she was the agent for the landlord companies, BPL/RI named in this application, at this hearing. Landlord SA of the landlord company VES, also named in this application, provided an authorization letter for her to speak on behalf of the landlord companies, BPL/RI, at this hearing.

Landlord CL testified that the tenant was served with the landlords' original application for dispute resolution hearing package, which was filed on May 21, 2015, on the same date by way of registered mail. Landlord CL provided a Canada Post tracking number verbally during the hearing. In accordance with sections 89 and 90 of the Act, I find that the tenant was deemed served with the landlords' original application on May 26, 2015, five days after its registered mailing.

Landlord SA testified that the tenant was served with the landlords' amended application for dispute resolution hearing package, which was amended on June 4, 2015, by way of registered mail on June 5, 2015. The landlords provided a Canada Post receipt and tracking number as proof of service with their application. In accordance with sections 89 and 90 of the Act, I find that the tenant was deemed served with the landlords' amended application on June 10, 2015, five days after its registered mailing.

Landlord SA testified that the tenant was served with the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated May 7, 2015 ("10 Day Notice"), on the same date, by way of posting to her rental unit door. The landlords provided a signed, witnessed proof of service form, with their Application. In accordance with sections 88 and 90 of the Act, I find that the tenant was deemed served with the landlords' 10 Day Notice on May 10, 2015, three days after its posting.

### Preliminary Issues

At the outset of the hearing, landlord SA confirmed that the landlords were withdrawing their application for an order of possession for unpaid rent, as the tenant vacated the rental unit July 2, 2015. Accordingly, this portion of the landlords' application is withdrawn.

The tenant initially filed a cross-application to the landlords' application, including relief to cancel the landlords' 10 Day Notice. The file number for this application appears on the front page of this decision. The tenant cancelled her application on July 3, 2015. Accordingly, the tenant's application was not addressed at this hearing.

Landlord SA testified that the tenant was served with the landlords' first written evidence package with the original application, the second written evidence package on June 8, 2015, the third written evidence package on June 25, 2015 by way of regular mail and the fourth written evidence package on July 2, 2015 by way of mail. The tenant is deemed to have received the third written evidence package on June 30, 2015 and the fourth written evidence package on July 7, 2015, five days after each of their mailings.

During the hearing, I advised the landlords' agents that their third and fourth written evidence packages were deemed served upon the tenant late, as they were not served at least 14 days prior to this hearing, as per Rule 3.14 of the Residential Tenancy Branch Rules of Procedure.

Landlord SA indicated that a copy of the tenant's bank statement was received by the tenant in regard to her cross-application and that it was served upon the tenant on June

25, 2015. Landlord SA stated that the tenant already had this evidence prior to this hearing.

Landlord CL stated that a two-page copy of a bank money draft, dated May 5, 2015, was obtained from the tenant's bank after the landlord had to investigate the matter. Landlord CL stated that the tenant claimed to have paid May 2015 rent to the landlords by way of this bank draft but instead, the tenant redeemed the bank draft herself and kept the rent money. Landlord SA indicated that this bank draft was served upon the tenant on July 2, 2015.

This bank draft is dated May 5, 2015 and the tenant's cross-application was made in May 2015. The landlords had an opportunity to conduct earlier investigations, if necessary. I find that the landlords' fourth written evidence package, containing the bank draft, was served upon the tenant late, as per Rules 3.14 and 3.15. Even if the landlords were attempting to respond to the tenant's cross-application, their evidence should have been deemed received by the tenant at least 7 days prior to this hearing. It was deemed received less than three days prior to this hearing, on July 7, 2015. Accordingly, I find that the tenant did not have sufficient notice of the landlords' bank draft evidence, in order to properly respond to the landlords' application. I find that this evidence is important and material to determining the issue of unpaid May 2015 rent, which the landlords have applied for in their application.

I also find that the landlord failed to submit important documentary evidence, including a rent ledger or statement of account regarding rent, which landlord CL testified was available at the time of this hearing. I find that this documentary evidence is important and material in order for me to make an informed decision on a balance of probabilities. This is particularly so given the allegations being made by the landlords' agents regarding rent fraud for May 2015 and rent that they claim is unpaid for June and July 2015. Oral evidence provided in the place of available documentary evidence is given less weight as it is inherently less reliable. This is especially the case where documentary evidence is available that could easily substantiate the landlords' case: the best evidence available should be provided.

In the absence of the tenant's attendance at this hearing, important written evidence that was not submitted by the landlord, and the late submission of important written evidence to the tenant, I dismiss the landlords' application for a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement, and to retain the tenant's security deposit, with leave to reapply.

The landlords' application to recover the \$50.00 filing fee from the tenant, is dismissed without leave to reapply. The landlords must bear the cost of their own filing fee for this application.

### Conclusion

The landlords' application for an order of possession for unpaid rent is withdrawn.

The landlords' application to recover the filing fee for this application is dismissed without leave to reapply.

The remainder of the landlords' application, for a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, and to retain the tenant's security deposit, is dismissed with leave to reapply.

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: July 10, 2015

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Residential Tenancy Branch

