



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTION SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on June 25, 2015 by the Landlord's Agent, hereinafter referred to as 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. No one was in attendance on behalf of the Tenants. The Landlord provided affirmed testimony that each Tenant was served notice of this application and this hearing by registered mail on June 30, 2015. Canada Post tracking information was provided in the Landlord's oral submission. The Landlord testified that she checked the Canada Post website prior to the hearing and each package remains unclaimed by the Tenants.

Section 90 of the *Act* provides that a document given or served in accordance with section 89 of the *Act*, if given or served by mail, is deemed to be received on the 5th day after it is mailed.

Residential Policy Guideline 12 (11) provides that where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Based on the above, I find that each Tenant was provided 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 Tenants to avoid service. Therefore, I find each Tenant was deemed served with Notice of this hearing and with the Landlord's evidence on July 5, 2015, pursuant to section 90 *Act*.

Issue(s) to be Decided

1. Has the Landlord regained possession of the rental unit?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord submitted evidence that the Tenants entered into a verbal month to month tenancy agreement that began on July 1, 2011. Rent of \$720.00 was due on or before the first of each month and sometime around July 1, 2011 the Tenants paid \$360.00 as the security deposit.

The Landlord testified that when the Tenants failed to pay several months of rent the owner hired their firm to act as their Agent. They then issued a 10 Day Notice to end tenancy which included the June 1, 2015 that was scheduled to be served upon the Tenants on June 2, 2015. The Landlords ended up posting the Notice to the Tenants' door on June 1, 2015, so the date and amount of unpaid rent was amended to remove the June outstanding rent.

The Landlord submitted that they regained possession of the rental unit as of July 24, 2015 when the Tenants vacated. As a result, they were withdrawing their requests for an Order of Possession and loss of rent for August 2015. The Landlord confirmed they were seeking the unpaid rent that was due June 1, 2015 in the amount of \$3,420.00 plus use and occupancy and loss of rent for the entire months of June and July 2015 of \$720.00 per month for total claim of \$4,860.00 (\$3,420.00 + \$720.00 + \$720.00).

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 June 4, 2015, three days after it was posted to their door. Therefore, the effective date of the Notice was **June 14, 2015**.

The Tenants neither paid the rent nor disputed the Notice; therefore, the Tenants were conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **June 14, 2015**.

The undisputed evidence was the Tenants remained in full possession of the rental unit until they vacated on July 24, 2015. No payments were made to the Landlord for past due rent or for use and occupancy of the rental unit.

The Landlord claimed unpaid rent of \$3,420.00 that was due June 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 accumulated unpaid rent up to May 31 2015, in the amount of **\$3,420.00**.

As noted above this tenancy ended **June 14, 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 June and July 2015. The Landlord did not regain possession of the unit until July 24, 2015 and is now tasked with trying to find a new tenant; therefore, I award the Landlord use and occupancy and any loss of rent for the entire months of June and July 2015, in the amount of **\$1,440.00** (2 x \$720.00).

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 up to May 31 2015	\$3,420.00
Use & Occupancy & Loss of Rent March 2015	1,440.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$4,910.00
LESS: Security Deposit \$360.00 + Interest 0.00	<u>-360.00</u>
Offset amount due to the Landlord	<u>\$4,550.00</u>

Conclusion

The Landlord withdrew their request for an Order of Possession and was successful with their application for monetary compensation for unpaid rent, use and occupancy, loss of rent, and recovery of their filing fee for the total amount of \$4,910.00. The Landlord's award was offset against the Tenants' security deposit leaving a balance owed to the Landlord of \$4,550.00.

The Landlord has been issued a Monetary Order for **\$4,550.00**. 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: July 30, 2015

Residential Tenancy Branch

