



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, FF

Introduction

This hearing was scheduled in response to the landlord's application. In the original application which was filed online on June 08, 2015, the landlord seeks only an order of possession. However, included with documents subsequently faxed to the Residential Tenancy Branch on June 12, 2015, is an amended application in which the landlord also seeks a monetary order as compensation for unpaid rent, and recovery of the filing fee. The landlord attended and gave affirmed testimony.

The landlord testified that the application for dispute resolution and notice of hearing (the "hearing package") was served by way of registered mail. The landlord further testified that the address used for service is the post office box provided by the tenants in their application for tenancy. Evidence submitted by the landlord includes the Canada Post tracking numbers for the registered mail. The landlord testified that neither hearing package was claimed by the tenants, and that both packages were returned to the landlord. Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that the tenants have been duly served in accordance with sections 89 and 90 of the Act which speak, respectively, to **Special rules for certain documents** and **When documents are considered to have been received**.

Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the month-to-month tenancy began on January 01, 2015. Monthly rent is due and payable in advance on the first day of each month. While the original agreement documents that rent is \$700.00, the landlord claims this was an error on the part of his agent, and by way of their initials on the

agreement the parties agreed to the amended amount of \$750.00. A security deposit of \$350.00 was collected.

The landlord issued a 10 day notice to end tenancy for unpaid rent dated April 02, 2015, which reflects that \$750.00 was unpaid when due on April 01, 2015. The notice was personally served on that same date. A copy of the notice was submitted in evidence. Subsequently, on April 02, 2015 the tenants made payment in the limited amount of \$600.00, leaving an unpaid balance of \$150.00 for April.

Thereafter, the landlord issued a 10 day notice to end tenancy for unpaid rent dated May 30, 2015, which also reflects that \$750.00 was unpaid when due on April 01, 2015. The landlord testified that the date shown on this notice as the date when rent was unpaid when due is erroneously shown as April 01, 2015, and should read May 01, 2015. This notice was personally served on June 01, 2015. It appears from the landlord's records that \$675.00 was paid toward rent on May 07, 2015, and yet if this is the case, I am unable to conclusively determine what amount of rent remained unpaid for May when the 10 day notice dated May 30, 2015 was issued. As well, the landlord has included a receipt which documents that \$675.00 was paid towards rent for May on June 01, 2015. Documentary evidence submitted by the landlord also includes a ledger of sorts, which shows shortfalls in rent for February and March 2015. Finally, it appears that a payment of \$800.00 was made toward rent for June, and it is understood that no rent has been paid for July or August, even while the tenants still reside in the unit.

Analysis

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent dated April 02, 2015. I find that the tenants did not pay the full amount of rent owing within 5 days of receiving the notice, and did not apply to dispute the notice. The tenants are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. Accordingly, I find that the landlord has established entitlement to an **order of possession**.

As to compensation, I find that the documentary evidence is insufficiently clear for me to conclusively determine how much rent remains unpaid and for what months. In the result, the landlord's application for a monetary order as compensation for unpaid rent must be dismissed with leave to reapply.

As the landlord has succeeded in his application for an order of possession, I find that he has established entitlement to recovery of the **\$50.00** filing fee. Accordingly, I order

that the landlord may withhold this amount from the security deposit at such time as the tenancy ends.

Finally, as the end of tenancy nears, the attention of the parties is drawn to section 38 of the Act which addresses **Return of security deposit and pet damage deposit**.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenants. This order must be served on the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The landlord's application for a monetary order as compensation for unpaid rent is dismissed with leave to reapply.

I hereby order that the landlord may withhold **\$50.00** from the security deposit in order to recover the filing fee for this application.

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: August 04, 2015

Residential Tenancy Branch

