



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARISSMA HOLDING LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the landlord to obtain an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for authorization to retain all or part of the tenants’ security deposit, and to recover the cost of the filing fee.

An agent for the landlord (the “agent”) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”), Application for Dispute Resolution (the “Application”) and documentary evidence were considered. The agent testified that the tenants were served the Notice of Hearing, Application and documentary evidence on August 23, 2015 by registered mail sent to the rental unit address and two separate packages, one addressed to each of the tenants. The agent provided two registered mail tracking numbers in evidence. According to the online registered mail tracking website, both packages were successfully delivered on August 25, 2015. The agent stated that the tenants continue to occupy the rental unit. Based on the undisputed testimony of the agent and the supporting documentary evidence, I find the tenants were served in accordance with the *Act* as of August 25, 2015, the day in which registered mail packages were signed for and accepted.

Preliminary and Procedural Matter

The agent submitted in evidence a copy of a document which supports that as of August 1, 2015, the residential property was sold to the current landlord company name. I am satisfied as a result, that the applicant landlord named company is the new

landlord, while the person representing the company is an agent and is listed as such on the front page of this decision.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The landlord submitted a copy of the tenancy agreement in evidence. A fixed term tenancy agreement began on August 1, 2014 and ultimately reverted to a month to month tenancy after September 30, 2014. Monthly rent in the amount of \$600 was due on the first day of each month. A security deposit of \$262.50 was paid by the tenants at the start of the tenancy.

The landlord submitted a copy of the 10 Day Notice for Unpaid Rent or Utilities (the "10 Day Notice") in evidence. The agent testified that the 10 Day Notice was personally served on the female tenant at the rental unit and that she signed the proof of service document at 10:30 a.m. on August 6, 2015. A copy of the proof of service document was submitted in evidence. The effective vacancy date on the 10 Day Notice is listed as August 16, 2015. The amount listed as owing is \$600 due August 1, 2015. The agent testified that the tenants' cheque was returned as NSF (non-sufficient funds) and was addressed in error to the former landlord. The agent testified that the tenants continue to owe full August 2015 rent of \$600 and that the landlord has suffered a loss of September 2015 rent of \$600 as the tenants continue to occupy the rental unit without paying rent.

The agent requested an order of possession.

Analysis

Based on the documentary evidence and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of Possession - I find that the tenants failed to pay the rent or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice, and that the tenants are

conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date on the 10 Day Notice which in the matter before me was August 16, 2015 as the 10 Day Notice was personally served on the female tenant on August 6, 2015. Accordingly, I grant the landlord an order of possession effective **two (2) days** after service on the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

Claim for unpaid rent and loss of rent – The agent testified that \$600 remains unpaid for August 2015 rent and that the landlord has suffered a loss of September 2015 rent of \$600 as the tenants continue to occupy the rental unit. Pursuant to section 26 of the *Act*, tenants must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. The tenants continue to occupy the rental unit. The landlord will not regain possession of the unit until after service of the order of possession and has therefore suffered a loss.

I find the landlord has met the burden of proof and has established a monetary claim of **\$1,200** comprised of \$600 in unpaid rent for August 2015 plus \$600 for loss of rent for September 2015.

As the landlord has succeeded with their application, I grant the landlord the recovery of the **\$50** filing fee. The tenants' security deposit of \$262.50 has accrued \$0.00 in interest since the start of the tenancy.

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 tenants' security deposit which has accrued no interest as follows:

Unpaid August 2015 rent	\$600
Loss of September 2015 rent	\$600
Filing fee	\$50.00
Subtotal	\$1,250
<i>(Less Tenants' Security Deposit of \$262.50 with \$0.00 in interest)</i>	<i>-(\$262.50)</i>
TOTAL OWING BY THE TENANTS TO LANDLORD	\$987.50

Conclusion

The landlord's application is successful.

I find that the landlord has proven their claim and is, therefore, entitled to an order of possession effective two (2) days after service upon the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

I find that the landlord has established a total monetary claim of \$1,250 as described above. I authorize the landlord to retain the tenants' full security deposit of \$262.50 in partial satisfaction of the claim, and I grant the landlord a monetary order under section 67 for the balance due of \$987.50. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 28, 2015

Residential Tenancy Branch

