



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

**OPR, MNR, MNSD, FF**

### **Introduction**

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of possession for unpaid rent, a monetary order for unpaid rent, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that each tenant was served copies of the Application for Dispute Resolution and Notice of Hearing via registered mail at the address noted on the Application. A Canada Post tracking number was provided as evidence of service to each tenant, sent on July 22, 2015

Tenants M.S. and W.S. refused to claim the mail and it was returned to the landlord. A failure to claim registered mail does not allow a party to avoid service. These documents are deemed to have been served on the 5<sup>th</sup> day after mailing, in accordance with section 89 and 90 of the Act; however the tenants did not appear at the hearing.

### **Preliminary Matters**

The application set out a claim for rent in the sum of \$2,350.00. The landlord said this sum reflected unpaid rent in July 2015 plus the loss of rent revenue for August and September 2015. As the tenants were served with Notice of the claim totaling \$2,350.00 I considered the claim for loss of rent revenue. I find this does not prejudice the tenants as the application set out the claim and the tenants were at liberty to attend the hearing to dispute the sum claimed.

The landlord now has possession of the rental unit.

The application was amended to include the female tenants' other known surname.

### **Issue(s) to be Decided**

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

May the landlord retain the security deposit paid by the tenant?

### Background and Evidence

This fixed-term tenancy commenced on February 1, 2015; the term was to end January 31, 2016 at which point it would convert to a month-to-month term. Rent was \$950.00 due on the first day of each month. A security deposit in the sum of \$450.00 was paid. A copy of the tenancy agreement was supplied as evidence.

The landlord stated that on July 8, 2015 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of July 18, 2015, was personally served to the tenants. The tenants did not vacate the rental unit until February 28, 2015.

The tenants paid \$500.00 of the July rent due and told the landlord to keep the deposit to cover the balance of the rent owed. A copy of a receipt for the payment was issued to the tenants on July 13, 2015 and supplied as evidence.

The landlord was not sure if the tenants would vacate. During the hearing the landlord looked up the date he paid for the advertising. The landlord began to advertise the rental unit in the local newspaper on August 23, 2015. The landlord delayed advertising as he believed it would be impossible to locate new tenants any earlier than the first day of September. The landlord was able to locate new tenants for September 1, 2015.

The landlord has requested compensation for the loss of August 2015 rent revenue in the sum of \$950.00.

### Analysis

Section 90 of the Act stipulates that a document given personally is deemed served on the day of personal delivery. Therefore, I find that the tenants received the Notice to end tenancy on September 8, 2015.

I find, pursuant to section 44(f) that the tenancy ended effective July 18, 2015; the date on the Notice ending tenancy.

I find that the tenants over-held in the rental unit beyond the effective date of the Notice until February 28, 2015. As a result I find that the landlord is entitled to per diem rent to February 28, 2015 in the sum of \$475.00.

Section 7 of the Act provides:

#### ***Liability for not complying with this Act or a tenancy agreement***

- 7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
- (2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

As the landlord did not commence advertising until August 23, 2015 I find that he did not fully mitigate the loss he has claimed for August 2015 rent revenue. However, the

landlord did locate new tenants for September 1, 2015; which I find is evidence of mitigation of a loss that could have been greater than that suffered.

Therefore, pursuant to section 67 of the Act I find the landlord is entitled to compensation for loss of August rent revenue to August 15, 2015 in the sum of \$475.00. If the landlord had made efforts to mitigate earlier there is the possibility that new tenants could have been identified by August 15, 2015.

The balance of the monetary claim is dismissed.

As the landlords' claim has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

Pursuant to section 72 of the Act, I find that the landlord is entitled to retain the \$450.00 security deposit in partial satisfaction of the claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$550.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

### Conclusion

The landlord is entitled to a monetary Order for per diem rent and loss of rent revenue in the sum of \$950.00. The balance of the claim is dismissed.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

This decision is final and binding on the parties 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 25, 2015

---

Residential Tenancy Branch

