



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BAYSIDE PROPERTY SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC 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 based on an undisputed 1 Month Notice for Cause (the “1 Month Notice”) dated June 26, 2015, 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”) and a building manager for the landlord (the “building manager”) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent and building manager were given the opportunity to provide their evidence orally. A summary of their 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 and Application on August 14, 2015 by registered mail sent to the rental unit address and a separate package for each tenant and addressed to each tenant. The agent provided two registered mail tracking number in evidence. According to the postal registered mail tracking website both tenants signed for the registered mail packages, one day after the other, on August 25, 2015 and August 26, 2015.

Regarding the documentary evidence, the agent stated that the tenants were served by registered mail on August 20, 2015, in the same way as described above, and that both packages were returned to the sender one day after the other, on August 25, 2015 and August 26, 2015.

Regarding the landlord's amended Application, the agent stated that the tenants were served by registered mail on September 2, 2015, in the same way as described above, and that one package addressed to tenant M.P. was signed for by the tenant on September 18, 2015, while the package addressed to tenant D.M. was returned to the sender on September 18, 2015.

Based on the undisputed testimony of the agent, the supporting documentary evidence, and the registered mail tracking information provided, I find the tenants were served in accordance with the *Act* with the landlord's original Application, Notice of Hearing, documentary evidence, and amended Application. I note that refusal or neglect on the part of the tenants to pick up a registered mail package does not constitute grounds for a Review Consideration.

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 April 1, 2010 and reverted to a month to month tenancy after March 31, 2011. Originally, monthly rent in the amount of \$765 was due on the first day of each month. After two rent increases under the *Act*, the current monthly rent is \$882 per month, due on the first day of each month. A security deposit of \$382.50 was paid by the tenants at the start of the tenancy, which the landlord continues to hold.

The landlord submitted a copy of the 1 Month Notice dated June 26, 2015 in evidence. The building manager testified that the 1 Month Notice was posted to the tenants' door on June 26, 2015 at 4:30 p.m. and was witnessed by S.W. The effective vacancy date on the 1 Month Notice is listed as July 31, 2015. There are a total of four causes listed on the 1 Month Notice. The tenants did not dispute the 1 Month Notice.

The landlord submitted a copy of the tenants' account ledger in evidence. The agent explained the ledger and that as of the date of the hearing the tenants continue to owe a total of \$1,034 in rent payment arrears. This amount was described as \$573.50 owing in

rental arrears as of August 1, 2015, and another \$460.50 owing for September 2015. The agent stated that for the partial rent payments for August and September 2015, a receipt for “use and occupancy only” was issued to the tenants.

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 accept the undisputed testimony that the tenants were served with the 1 Month Notice and did not dispute the 1 Month Notice. As a result, the tenants are conclusively presumed pursuant to section 47 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date on the 1 Month Notice, which in the matter before me was July 31, 2015. Accordingly, **I grant** the landlord an order of possession effective **two (2) days** after service on the tenants.

Claim for unpaid rent and loss of rent – The agent testified that \$1,034 remains unpaid, comprised of \$573.50 in rent payment arrears up to August 1, 2015, plus another \$460.50 owing for the amount of loss for September 2015 rent. I accept that the tenants continue to occupy the rental unit as I have no evidence before me to prove to the contrary. 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. As the tenants continue to occupy the 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 **\$1,034** comprised of unpaid rent and loss of rent as claimed.

As the landlord has succeeded with their application, **I grant** the landlord the recovery of the **\$50** filing fee. The tenants’ security deposit of \$382.50 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 rent and loss of rent as claimed	\$1,034
Recovery of cost of filing fee	\$50
Subtotal	\$1,084
<i>(Less Tenants' Security Deposit of \$382.50 with \$0.00 in interest)</i>	<i>-\$382.50</i>
TOTAL OWING BY THE TENANTS TO LANDLORD	\$701.50

Conclusion

The landlord's application is successful.

The landlord has been granted 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.

The landlord has established a total monetary claim of \$1,084 as described above. I authorize the landlord to retain the tenants' full security deposit of \$382.50 in partial satisfaction of the claim, and I grant the landlord a monetary order under section 67 for the balance owing by the tenants to the landlord in the amount of **\$701.50**. 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 25, 2015

Residential Tenancy Branch

