



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Carrington Properties (Cranberry Lane) Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, and to recover the fee for filing this Application for Dispute Resolution.

The female Agent for the Landlord stated that on September 03, 2015 the Application for Dispute Resolution, the Notice of Hearing, a copy of the residential tenancy agreement, and a copy of the Notice to End Tenancy that is the subject of these proceedings were sent to both Tenants, via registered mail. The Landlord submitted Canada Post documentation that corroborates this testimony.

The Tenant stated that he and the co-tenant both received the aforementioned documents and that he is representing his co-tenant at these proceedings, whom he refers to as his wife. As the Tenant acknowledged receipt of the documents, they were accepted as evidence for these proceedings.

On September 30, 2015 the Landlord six additional documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Landlord stated that these documents were served to the Tenants by registered mail on September 30, 2015. The male Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The female Agent for the Landlord stated that a letter, dated July 03, 2015, was also submitted to the Residential Tenancy Branch and served to the Tenants as evidence for these proceedings, although I did not have that letter at the time of the hearing. The male Tenant confirmed that this letter had been served to the Tenants. As the letter was served to the Tenants and the Residential Tenancy Branch does, on occasion, misfile documents, the Landlord was given the opportunity to resubmit this letter to the Residential Tenancy Branch. The letter was received by fax on October 08, 2015 and was considered in this adjudication.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and to a monetary Order for unpaid rent?

Background and Evidence

The female Agent for the Landlord and the male Tenant agree that:

- the tenancy began on April 01, 2012;
- the Tenants were required to pay rent of \$1,540.00 by the first day of each month;
- rent was normally paid by “direct deposit”; and
- the payment for rent for July of 2015 was returned by the Tenants’ financial institution due to insufficient funds.

The Landlord is seeking compensation in the amount of \$1,415.00. At the hearing the female Agent for the Landlord stated that the Tenant still owes \$1,380.00 in rent for July and \$35.00 for an “NSF” fee from July. When the Tenant was initially asked if he still owes \$1,380.00 in rent for July he acknowledged that he did.

The male Tenant subsequently stated that on July 05, 2015, which he says was a Friday, he placed an envelope through the Landlord’s mail slot, which contained \$1,540.00. He stated that on July 06, 2015 or July 08, 2015 the male Agent for the Landlord contacted him and told him that:

- he had found the envelope partially ripped;
- he had found a clothes hanger and some tape on the floor beside the envelope; and
- there was only \$160.00 in the envelope.

The male Tenant subsequently stated that the envelope was placed through the mail slot on July 21, 2015, which he says was a Friday, and that the male Landlord spoke to him regarding the payment on July 22, 2015 or July 23, 2015.

The male Agent for the Landlord stated that he entered the Landlord’s business office and found a clothes hanger, some tape, and a partially torn envelope on the floor. He stated that the envelope was not torn enough to remove cash so he opened the envelope and found \$160.00.

The male Agent for the Landlord and the male Tenant agree that the male Agent for the Landlord reported the incident to the police. The male Tenant stated that the police did not speak with him in regards to the theft.

The female Agent for the Landlord stated that the police told her they did not believe money could have been removed from the envelope through the mail slot, even with the use of a clothes hanger and tape.

The Tenants contend that placing cash through the mail slot was an authorized method of paying the rent. The male Tenant stated that he has paid his rent by placing cash through the mail slot prior to July of 2015 and that several other tenants pay their rent in that manner. He stated that he always received a receipt for cash payments made prior to July of 2015.

The female Agent for the Landlord stated that placing cash through the mail slot is not an approved method of paying rent and that tenants are advised that cash payments must be made directly to an Agent for the Landlord. She says the Tenant has paid cash for rent on two occasions prior to July of 2015, which was paid to an Agent for the Landlord.

The male Agent for the Landlord stated that he has never observed a cash payment being made through the mail slot.

The female Agent for the Landlord stated that the Ten Day Notice to End Tenancy was sent to the Tenants, by mail, on July 23, 2015. The male Tenant acknowledged receiving this Notice in the mail, although he does not recall when it was received. The Tenants did not file an Application for Dispute Resolution disputing the Notice.

The male Agent for the Landlord stated that he personally served the Ten Day Notice to End Tenancy to the male Tenant, although he cannot recall the date of service of the name of the male Tenant. The male Tenant stated that he does not recall receiving the Notice from the male Agent for the Landlord.

The Notice to End Tenancy that was served, which was submitted in evidence, declares that rent of \$1,415.00 is due and that the Tenants must vacate the rental unit by August 01, 2015.

Analysis

When a cash payment is made, the onus is on the person making the payment to establish that the payment has been made. I find that the Tenants have submitted insufficient evidence to establish that \$1,540.00 in cash was placed through the mail slot of the Landlord's business office.

While I accept that a clothes hanger and tape were found beside the envelope containing the cash payment I cannot conclude, on the balance of probabilities, that a third party removed cash from the envelope with the aid of tape and a clothes hanger. I find it incredibly unlikely that a third party could remove the cash in this manner, without removing the actual envelope. I find it far more likely that the Tenants or someone

acting on behalf of the Tenants fabricated the evidence to suggest there had been a theft.

In determining that is unlikely that cash was removed through the mail slot I was influenced, in part, by the male Agent for the Landlord's testimony that when he found the envelope he had to open it to count the money. Had someone successfully removed cash through the mail slot, I would expect the envelope holding the cash to be significantly damaged.

I found the testimony of the male Tenant to be inconsistent. He initially stated that he did owe rent for July of 2015 and then alleged that a portion of his payment had been stolen. He initially stated that his payment had been made on July 05, 2015 and subsequently stated it had been made on July 21, 2015. He stated that his payment was made on a Friday; however July 05, 2015 was a Sunday and July 21, 2015 was a Wednesday. I did not find the male Tenant to be a credible witness and I placed limited weight on his testimony.

As the Tenants have failed to establish they paid their full rent for July of 2015, I find that they still owe \$1,380.00 in rent for that month.

In adjudicating this matter I have placed little weight on the male Tenant's testimony that placing a cash payment through the mail slot was a method of payment authorized by the Landlord. In reaching this conclusion I was heavily influenced by the absence of evidence such as statements from other tenants, that corroborates this testimony or that refutes the testimony of the female Agent for the Landlord, who stated that it was not an authorized method of payment.

In the absence of evidence that establishes the Landlord authorized tenants to pay rent, in cash, by placing it through their mail slot, I find the Tenant must assume the risk of paying rent in this manner.

The Landlord has not made an application for a monetary Order for money owed or compensation for damage or loss nor has the Landlord clearly informed the Tenants the Landlord is seeking to recover an "NSF" fee. I therefore decline to consider a claim for an "NSF" fee at these proceedings. The Landlord retains the right to file another Application for Dispute Resolution seeking compensation for this fee.

On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy was mailed to the Tenants on July 23, 2015. Section 90 of the *Act* stipulates that a document that is served by mail is deemed to be received on the fifth day after it is mailed. I therefore find that the Tenants received the Notice to End Tenancy on July 28, 2015.

Section 46(1) of the *Act* stipulates that a Ten Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenants are deemed to have received this Notice on July 28, 2015, I find that the earliest effective date of the Notice was August 07, 2015.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was August 07, 2015.

Section 46 of the *Act* stipulates that a Tenant has five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended on the effective date of the Notice. On this basis I grant the landlord an Order of Possession.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$1,430.00, which is comprised of \$1,380.00 in unpaid rent and \$50.00 in compensation for the fee paid to file this Application for Dispute Resolution and I grant the Landlord a monetary Order for \$1,430.00. 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.

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: October 09, 2015

Residential Tenancy Branch

