



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC, MNR, FF

Introduction

This hearing was scheduled in response to an application by the landlords for an order of possession / a monetary order as compensation for unpaid rent or utilities / and recovery of the filing fee.

Landlord “ISB” attended and gave affirmed testimony. The landlord testified that the application for dispute resolution and the notice of hearing (the “hearing package”) was served by registered mail. Evidence submitted by the landlord includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the item was “unclaimed by recipient.” Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that the tenant has been served in compliance 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 landlords are entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the tenancy began on June 01, 2014. Monthly rent of \$1,500.00 is due and payable in advance on the first day of each month, and a security deposit of \$750.00 was collected.

Pursuant to section 47 of the Act which addresses **Landlord’s notice: cause**, the landlords issued a 1 month notice to end tenancy dated June 22, 2015. The notice was served by way of registered mail, and by way of attachment to the unit door on June 22, 2015. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is July 31, 2015. The reason identified on the notice in support of its issuance is as follows:

Tenant is repeatedly late paying rent.

The landlords claim that rent has been paid late for each of the months of May, June, July, August and September 2015. Landlord "ISB" also testified that rent has not presently been paid for October 2015. The tenant did not file an application to dispute the notice, and he continues to reside in the unit. The landlords' application for dispute resolution was filed on August 25, 2015.

As to compensation, the landlords seek \$206.44 in unpaid utilities. However, there is no documentary evidence before me in support of that aspect of the claim.

Analysis

Residential Tenancy Policy Guideline # 38 speaks to "Repeated Late Payment of Rent," and provides in part:

Three late payments are the minimum number sufficient to justify a notice under these circumstances.

Based on the documentary evidence and the affirmed / undisputed testimony of landlord "ISB," I find that the tenant has been late in his payment of rent for each of the months of May, June, July, August, September and October 2015. I also find that the tenant was served with a 1 month notice to end tenancy for cause dated June 22, 2015. The tenant did not dispute the notice within 10 days of receiving the notice. The tenant is therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. Following from all of the foregoing, I find that the landlords have established entitlement to an **order of possession**.

As to compensation, in the absence of any documentary evidence in support of the claim for unpaid utilities, that aspect of the landlords' application is dismissed with leave to reapply.

As the landlords have succeeded with the principal aspect of their application, I find that they have also established entitlement to recovery of the **\$50.00** filing fee. I order that the landlords may withhold \$50.00 from the tenant's security deposit in order to recover the filing fee.

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 landlords effective not later than **two (2) days** after service on the tenant. This order must be served on the tenant. Should the tenant 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.

I order that the landlords may recover the **\$50.00** filing fee for this application by way of withholding that amount from the tenant's security deposit.

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 05, 2015

Residential Tenancy Branch

