



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ZAHRA INVESTMENTS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR; CNR

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55; and
- a monetary order for unpaid rent, pursuant to section 67.

This hearing also dealt with the tenants' cross-application pursuant to the *Act* for:

- cancellation of the landlord's two 10 Day Notices to End Tenancy for Unpaid Rent, dated January 25, 2016 and February 4, 2016 (collectively "two 10 Day Notices"), pursuant to section 46.

The two tenants, male and female, did not attend this hearing, which lasted approximately 18 minutes. The landlord's agent, SA ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she was the manager for the landlord company named in this application and that she had authority to represent it as an agent at this hearing.

The landlord testified that both tenants were each served with a separate copy of the landlord's application for dispute resolution hearing package on February 16, 2016, by way of registered mail. The landlord provided copies of two Canada Post receipts and tracking numbers to confirm service. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's Application on February 21, 2016, five days after their registered mailings.

The landlord confirmed that she received a copy of the tenants' application for dispute resolution hearing package. She stated that she did not receive the amendment to the

tenants' application, indicating that they were disputing the second 10 Day Notice, dated February 4, 2016 ("second 10 Day Notice"). However, the landlord testified that she wanted to deal with the second 10 Day Notice at this hearing. Accordingly, this decision also addresses the second 10 Day Notice.

The landlord testified that both tenants were served with the landlord's first 10 Day Notice, dated January 25, 2016 ("first 10 Day Notice"), by way of posting to their rental unit door on the same date. The landlord testified that the male tenant was personally served with the landlord's second 10 Day Notice on February 4, 2016. The landlord provided a proof of service document for the second 10 Day Notice, where the male tenant signed a hand delivery receipt and a witness signed to confirm that she saw the landlord serve the male tenant. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's first 10 Day Notice on January 28, 2016, three days after its posting, and were served with the landlord's second 10 Day Notice on February 4, 2016.

#### Preliminary Issue – Landlord's Application

The landlord initially filed an application for dispute resolution by direct request, which is a non-participatory hearing. However, the tenants had already filed their application for dispute resolution first on January 29, 2016. Therefore, a participatory hearing was already scheduled for the tenants' application and the landlord's application, which was filed on February 15, 2016, was then joined to be heard at the same time as the tenant's application at this hearing.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's Application to increase the landlord's monetary claim from \$4,900.00 to \$5,850.00 to include all unpaid rent to date, including for March 2016. I find that the tenants are aware that rent is due on the first day of each month as per their tenancy agreement. The tenants continue to reside in the rental unit, despite the fact that two 10 Day Notices required them to vacate prior to this hearing, for failure to pay the full rent due. Therefore, the tenants knew or should have known that by failing to pay their rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenants had appropriate notice of the landlord's claims for increased rent, despite the fact that they did not attend this hearing.

#### Preliminary Issue – Dismissal of Tenants' Application

Rule 10.1 of the Rules of Procedure provides as follows:

**10.1 Commencement of the dispute resolution proceeding:** The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

**In the absence of the tenants' participation in this hearing, I order the tenants' application dismissed without leave to reapply.**

#### Issues to be Decided

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

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

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my findings are set out below.

The landlord testified that this month-to-month tenancy began on September 1, 2014. Monthly rent in the amount of \$950.00 is payable on the first day of each month. A security deposit of \$475.00 was paid by the tenants and the landlord continues to retain this deposit. The landlord testified that the tenants continue to reside in the rental unit, as she saw them there on March 9, 2016. The landlord provided a copy of the written tenancy agreement with its Application.

The landlord issued the first 10 Day Notice, indicating that rent in the amount of \$3,950.00 was due on January 1, 2016. The notice indicates an effective move-out date of February 3, 2016. The landlord issued the second 10 Day Notice, indicating that rent in the amount of \$4,900.00 was due on February 1, 2016. The notice indicates an effective move-out date of February 14, 2016. The landlord confirmed that no rent payments were made by the tenants after the two 10 Day Notices were issued.

The landlord seeks a monetary order of \$5,850.00 for unpaid rent. The landlord provided a rent ledger from August 6, 2014 to February 1, 2016, showing the rent and payments during this tenancy. The landlord confirmed that the tenants owe rent dating back to November 24, 2014 and they have made partial rent payments over time, as evidenced by the rent ledger. The landlord confirmed that the tenants last made a

partial rent payment on December 24, 2015, and that no rent payments were made in January, February or March 2016.

### Analysis

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. The tenants failed to pay the full rent due within five days of receiving the two 10 Day Notices. Although the tenants made an application pursuant to section 46(4) of the *Act* within five days of receiving both 10 Day Notices, they did not appear at this hearing to present their evidence. In accordance with section 46(5) of the *Act*, the failure of the tenants to attend this hearing or pay the full rent due within five days, led to the end of this tenancy on February 7, 2016, the corrected effective date on the first 10 Day Notice. In this case, this required the tenants and any other occupants on the premises to vacate the premises by February 7, 2016. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. I find that the landlord's two 10 Day Notices comply with section 52 of the *Act*.

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenants failed to pay rent totalling \$5,850.00 during this tenancy from November 1, 2014 to March 31, 2016. Therefore, I find that the landlord is entitled to \$5,850.00 in rental arrears.

The tenants were required to vacate the rental unit by February 7, 2016, the corrected effective date on the first 10 Day Notice. As per the landlord's evidence, the tenants continue to reside in the rental unit, causing loss to the landlord under section 7(1) of the *Act*. Rent of \$950.00 was due on a March 1, 2016. Therefore, I find that the landlord is entitled to \$950.00 in rental arrears for the entire month of March 2016, despite the fact that this hearing was held on March 15, 2016. I make this finding because the landlord may have to serve the tenants with the order of possession, possibly enforce the order of possession, examine the rental unit, repair any potential damage, and possibly advertise and attempt to re-rent the unit.

The landlord continues to hold the tenants' security deposit of \$475.00. Although the landlord did not apply to retain this deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit of \$475.00 in partial satisfaction of the monetary award. No interest is payable over this period.

### Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service of this Order** on the tenant(s). Should the tenant(s) or any other occupants on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$5,375.00 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenants' application is dismissed without leave to reapply.

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: March 15, 2016

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Residential Tenancy Branch

