



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **INTERIM DECISION**

### **Introduction**

The hearing on April 13, 2016 was convened in response to cross applications.

The Tenants filed an Application for Dispute Resolution, in which two Tenants applied to cancel a Notice to End Tenancy for Unpaid Rent or Utilities and “other”.

The male Tenant stated that the Application for Dispute Resolution, the Notice of Hearing, and a copy of the Ten Day Notice to End Tenancy for Unpaid Rent were sent, by registered mail, to the Landlord. The Landlord acknowledged receiving these documents.

The male Tenant stated that no other documents were submitted in evidence by the Tenants.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, a monetary Order for money owed or compensation for damage or loss, a monetary Order for damage, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on February 28, 2016 or February 29, 2016 the Application for Dispute Resolution, the Notice of Hearing, and evidence labelled A1 to 10-9 were sent, by registered mail, to the two Respondents named in his Application for Dispute Resolution (Tenants).

The male Tenant acknowledged receipt of these documents with the exception of the tenancy agreement labelled A2 to A9.

On March 15, 2016 the Landlord submitted an Amendment to an Application for Dispute Resolution, in which he increased the amount of his monetary claim from \$1,796.98 to \$6,770.29. The Landlord stated that this document was sent to both Tenants, via registered mail, on March 16, 2016.

On March 16, 2016 the Landlord submitted documents B/11, 11-1, 11-2, C1, C2, and an unlabeled Application to Rent. He stated that these documents were mailed to the Tenants in the package mailed on March 16, 2016.

The Landlord cited two Canada Post tracking numbers that corroborate his testimony that a package was mailed on March 16, 2016. He stated that the Canada Post website shows the package sent to the female Tenant was not picked up but that the package sent to the male Tenant was signed for by the male Tenant on March 21, 2016.

The male Tenant stated that he received some documents from the Landlord on March 21, 2016 but they did not include an Amendment to an Application for Dispute Resolution or documents C1, C2, or the unlabeled Application to Rent.

On March 23, 2016 the Landlord submitted an Amendment to an Application for Dispute Resolution, in which he increased the amount of his monetary claim from \$6,770.29 to \$9,270.29. The Landlord stated that this document was sent to both Tenants, via registered mail, on March 23, 2016.

On February 29, 2016 the Landlord submitted documents B-10-2a and B-10-2b. He stated that these documents were served to the Tenant in the evidence package that was mailed on March 23, 2016.

On March 23, 2016 the Landlord submitted documents D1 to D10. He stated that these documents were mailed to the Tenants in the package mailed on March 23, 2016.

On March 24, 2016 the Landlord submitted document D11. He stated that these documents were mailed to the Tenants in the package mailed on March 23, 2016.

The Landlord cited two Canada Post tracking numbers that corroborate his testimony that a package was sent on March 23, 2016. He stated that the Canada Post website shows that the male Tenant was signed for both packages on March 29, 2016.

The male Tenant stated that he received some documents from the Landlord on March 29, 2016, although he cannot recall which documents he received. He stated that he did not receive an Amendment to an Application for Dispute Resolution, documents B-10-2a and B-10-2b, or documents D1 to D11.

The parties were advised that I have insufficient evidence to determine if the Landlord was being truthful when he testified that all of the aforementioned documents have been served or if the male Tenant is being truthful when he testified that several of the documents were not received.

As I am unable to determine whether all of the documents have been properly served to the Tenants, the hearing was adjourned to provide the Landlord with the opportunity to re-serve his entire evidence package. The Landlord was advised that he must create one evidence package that is clearly labelled and that he must provide a copy of that package to the Residential Tenancy Branch and one copy of that package to the Tenants, by registered mail. The Landlord has until April 30, 2016 to mail these documents.

The parties were advised that the hearing would proceed on April 13, 2016 with the understanding that no documentary evidence that was not in the Tenants' possession would be considered on April 13, 2016 and that I would adjourn the hearing at a point I determined it was necessary to refer to documents submitted in evidence by the Landlord.

#### Preliminary Matter #1

I find that I am able to adjudicate the claim for unpaid rent, to adjudicate the application for an Order of Possession, and to adjudicate the application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent on the basis of the testimony of the parties, without the need to refer to documents submitted in evidence by the Landlord.

I have opted to render a decision on these three issues as I find it would be prejudicial to the Landlord to delay my decision on these three matters, given that the Tenants are still occupying the rental unit and have not paid rent for March or April of 2016.

#### Preliminary Matter #2

The issues not determined in this interim decision will be considered at the reconvened hearing. Those issues include rent incurred after April 30, 2016; NSF fees; utility charges; damage to the rental unit; and a claim of \$2,500.00 for "acting/posting advertisement". I specifically note that the Landlord may be awarded a second monetary Order after the next hearing.

#### Issues to be Determined in the Interim Decision

Is the Landlord entitled to an Order of Possession or should the Ten Day Notice to End Tenancy be set aside?

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

Is the Landlord entitled to retain the security deposit in partial satisfaction of the amount owed for rent?

#### Background and Evidence

The Landlord and the Tenants agreed that:

- this tenancy began on March 01, 2015;
- the Tenants agreed to pay monthly rent of \$2,200.00 by the first day of each month;
- the Tenants both signed a written tenancy agreement; and
- the Tenants paid a security deposit of \$1,100.00.

The Landlord stated that the tenancy agreement was for a fixed term that began on March 01, 2015 and ended on March 31, 2016. The female Tenant stated that she

recalls the tenancy agreement was for a fixed term; that she has not seen the tenancy agreement since she signed it; because she has not seen the tenancy agreement for some time she is not certain when the fixed term ends; and she believes the fixed term ends on March 31, 2016 or April 01, 2016.

The Landlord stated that the Tenants viewed the rental unit on February 21, 2015; that he went to their home on February 23, 2015, at which time they signed two copies of the same tenancy agreement; that he kept one copy of the tenancy agreement; and that he gave the second copy of the tenancy agreement to the female Tenant.

The female Tenant stated that they viewed the rental unit on February 23, 2015; that they signed the tenancy agreement at the rental unit on February 23, 2015; that they only signed one copy of the agreement; and that the Landlord did not give them a copy of the agreement on that date.

The female Tenant stated that sometime during the first or second month of the tenancy the Tenants gave the Landlord a letter in which they asked for a copy of the tenancy agreement and that the Landlord told them one had already been provided. The Tenants did not submit a copy of the letter that was allegedly sent.

The female Tenant stated that the Tenants made several subsequent verbal requests for a copy of the tenancy agreement, although they did not provide the Landlord with a second written request for a copy. She stated that the most recent verbal request for a copy of the tenancy agreement was made in January of 2016.

The Landlord stated that in addition to providing the Tenants with a copy of the tenancy agreement on February 23, 2015, he emailed a copy of the agreement to the Tenants on March 02, 2015. He stated that he still has a copy of the email he sent on March 02, 2015, which he read aloud during the hearing. He stated that he did not submit the email as evidence.

The Witness for the Tenants, who is the female Tenant's father, initially stated that he was helping the Tenants move into the rental unit on March 01, 2015 at which time:

- he witnessed the Tenants sign one tenancy agreement;
- he witnessed the Tenants ask for a copy of the agreement that was signed; and
- he did not witness the Landlord provide them with a copy of the tenancy agreement.

When the Landlord declared that the Witness could not have witnessed the parties sign the tenancy agreement on March 01, 2015 because it was signed on February 23, 2015 the Witness for the Tenants stated that:

- he witnessed the Tenants sign some papers on March 01, 2015, which he assumed was the tenancy agreement;
- he did not actually view the documents that were signed on March 01, 2015 so it is possible they signed something other than the tenancy agreement;

- he was also present when the Tenants viewed the rental unit sometime in the latter part of February of 2015;
- he witnessed the parties sign some papers when the rental unit was viewed; and
- he did not view the documents that were signed when the unit was viewed, so he does not know what documents were signed at that time.

The Landlord and the Tenants agree that no rent was paid for March of April of 2016.

The female Tenant stated that the Tenants did not have all of the rent for March when it was due on March 01, 2016; that they offered to pay the Landlord \$1,500.00 of the rent that was due on March 01, 2016; and that the Landlord refused their offer. The Landlord stated that the Tenants did not offer to pay any rent for March and that he would not have refused a partial payment.

The female Tenant stated that the Tenants did not have all of the rent for April when it was due on April 01, 2016 and that they did not offer to pay any rent for April because the Landlord was not responding to their telephone calls. The Landlord stated that the Tenants did not offer to pay any rent for April and he did not receive any telephone calls offering to pay the rent.

The Landlord and the Tenants agree that the Landlord served the Tenants with the Ten Day Notice to End Tenancy for Unpaid Rent, dated March 02, 2016, which the Tenants submitted as evidence for these proceedings. The Landlord stated that the Notice was sent by registered mail on March 02, 2016. The female Tenant stated that she is not certain when the Notice was received, but she believes it was received on March 04, 2016 or March 05, 2016. The parties agree that the Notice declared that the Tenants must vacate the rental unit by March 18, 2016.

The female Tenant stated that they were able to pay their rent in full prior to March of 2016 but they were unable to pay their rent, in full, for March or April because of a change in their personal financial situation. She stated that there is a provincial program which would have provided them with funding of \$800.00 to supplement their rent but they were unable to qualify for this program as they did not have a copy of their written tenancy agreement. The Tenants provided no documentary information regarding the program.

### Analysis

On the basis of the undisputed evidence I find that the Tenants entered into a tenancy agreement with the Landlord that required the Tenants to pay monthly rent of \$2,200.00 by the first day of each month.

There is a general legal principle that places the burden of proving a fact on the person who is alleging the fact. In these circumstances, the burden of proving the Landlord did not give the Tenants with a copy of the tenancy agreement rests with the Tenants.

I find that the Tenants have submitted insufficient evidence to establish that the Landlord did not give them with a copy of the tenancy agreement when this tenancy began.

In determining that there is insufficient evidence to establish that the Landlord did not give the Tenants a copy of the tenancy agreement I was influenced, to some degree, by the testimony of the Landlord. I found the Landlord's evidence in regards to providing a copy of the tenancy agreement to be direct, consistent, and very credible in that he was readily able to provide specifics regarding the dates documents were signed and details surrounding those dates.

I note that when the Landlord read aloud the email he allegedly sent on March 02, 2015, he read it quickly and without hesitation and he provided details such as the Tenant's email address. It appeared to me that the Landlord was reading an email he had in his possession.

In determining that there is insufficient evidence to establish that the Landlord did not give the Tenants a copy of the tenancy agreement I was further influenced by the absence of evidence that corroborates the female Tenant's testimony that the Tenants asked for a copy of the agreement on several occasions or that they asked for a copy, in writing, near the beginning of the tenancy. I specifically note that the Tenants did not submit a copy of the letter in which they allegedly asked for a copy of the agreement.

In determining that there is insufficient evidence to establish that the Landlord did not give the Tenants a copy of the tenancy agreement I placed little weight on the testimony of the Witness for the Tenants. I placed little weight on his testimony, in part, because it was inconsistent. He initially stated that he witnessed the parties signing the tenancy agreement on March 01, 2015 and when the Landlord challenged that testimony he acknowledged that he saw the parties sign some documents on March 01, 2015, although he did not look at them.

I placed little weight on the Witness for the Tenant's testimony, in part, because after being questioned he could only declare that he saw the parties sign unknown documents on March 01, 2015 and sometime in February of 2015 when they were viewing the rental unit.

Although the Witness for the Tenant did overhear the Tenants asking for a copy of the agreement that was signed on March 01, 2015, I find it highly likely that they were not asking for a copy of the tenancy agreement at that time, as both parties agree the tenancy agreement was signed sometime in February.

Section 26(1) of the *Act* requires a tenant to pay rent when it is due whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent. Even if I concluded that the Landlord breached section 13(1) of the *Act* by not providing the Tenant with a copy of the tenancy agreement, I would conclude that the Tenants were obligated to pay rent when it was due.

Although it is moot, I note that the Tenants submitted no documentary evidence to establish that they would have qualified for a rent subsidy of \$800.00 and/or that the only reason they did not obtain this funding was because they were unable to produce a tenancy agreement.

On the basis of the undisputed evidence I find that no rent has been paid for March or April of 2016. As Tenants are required to pay rent when it is due, pursuant to section 26(1) of the *Residential Tenancy Act (Act)*, I find that the Tenants must pay \$4,400.00 in rent to the Landlord for these two months.

I note that the Tenants submitted no evidence to establish that they had authority from the Residential Tenancy Branch to withhold rent or that they had any other legal right to withhold their rent.

On the basis of the undisputed evidence I find that the Landlord mailed a Ten Day Notice to End Tenancy to the Tenants on March 02, 2016, which they received sometime shortly thereafter.

Section 46(1) of the *Act* entitles landlords to end the tenancy within ten days, by providing proper written notice, if rent is not paid when it is due. As the Tenants did not pay full rent when it was due and the Landlord served the Tenants with a Ten Day Notice to End Tenancy for Unpaid Rent, I find that the Landlord had grounds to end this tenancy pursuant to section 46(1) of the *Act*. I therefore dismiss the Tenants' application to set aside this Notice to End Tenancy and I grant the Landlord an Order of Possession.

I note that even if I accepted the female Tenant's testimony that the Landlord refused to accept her partial rent payment for March of 2016, I would conclude that the Landlord had grounds to end this tenancy pursuant to section 46(1) of the *Act*, as the Tenants were obligated to pay all of the rent that was due on March 01, 2016.

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 at 1:00 p.m. on April 30, 2016. This Order may be served on the Tenants, 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 \$4,500.000, which is comprised of \$4,400.00 in unpaid rent and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit of \$1,100.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$3,400.00. 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: April 14, 2016

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Residential Tenancy Branch