



Dispute Resolution Services

Page: 1

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 OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution, filed February 17, 2016 and amended February 23, 2016, by the Landlord for an Order of Possession based on unpaid rent, a Monetary Order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Landlord's, property manager, K.O. appeared at the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

K.O. testified that she served both Tenants individually with the Notice of Hearing and their Application on February 19, 2016 by registered mail. K.O. further testified that both Tenants were also served with the Landlord's Amended Application for Dispute Resolution on February 25, 2016. K.O. provided the tracking numbers for the original package sent on February 19, 2016 and provided copies of the envelopes and registered mail tracking numbers sent on February 25, 2016. K.O. testified that the Tenant B.M. picked up both of the packages addressed to her. K.O. further stated that the registered mail for Tenant, J.C., was returned as unclaimed. K.O. further stated that J.C. may have moved out of the rental unit.

Under the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenants were duly served in accordance with the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which indicated as follows: the tenancy began February 1, 2015; monthly rent was payable in the amount of \$850.00; and the Tenants paid a security deposit in the amount of \$425.00 paid on January 15, 2014 (K.O. testified that this was a typo as the security deposit was in fact received January 15, 2015.)

K.O. testified that the current Landlord took over management of the rental property in December of 2015.

The Tenants failed to pay rent for the month of January 2016. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on January 10, 2016 indicating the amount of \$850.00 was due as of January 1, 2016 (the "Notice").

Based on the testimony of K.O., I find that the Tenants were served with the Notice on January 10, 2016 by posting to the rental unit door. Section 90 of the Act provides that documents served in this manner are deemed served three days later. Accordingly, I find that the Tenants were served with the Notice as of January 13, 2016.

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days of service, namely, January 18, 2016. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

K.O. testified that the Tenants did not pay the outstanding rent, nor did they apply for dispute resolution. K.O. further testified that to her knowledge the Tenant J.C. has moved from the rental unit. Also introduced in evidence was an email from the Tenant, B.M., to the building manager dated February 17, 2016 wherein the Tenant writes that she hopes to move from the rental unit "in the next 2 weeks".

K.O. further testified that the Tenants failed to pay rent for February 2016, March 2016, and April 2016 such that the sum of \$3,400.00 was outstanding for rent. The Landlord's amended Application for Dispute Resolution further provided that the Landlord sought \$137.91 in outstanding utilities. The Landlords also sought recovery of the \$100.00

filing fee which they paid for both the original application and the amended application. In total the Landlord sought the sum of **\$3,737.91** for the following:

Rent for January 2016	\$850.00
Rent for February 2016	\$850.00
Rent for March 2016	\$850.00
Rent for April 2016	\$850.00
Outstanding utilities	\$137.91
Filing fee (original application)	\$100.00
Filing fee (amended application)	\$100.00
TOTAL CLAIMED	\$3,737.91

The Landlord also sought to retain the security deposit of \$425.00 towards the outstanding amount.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

The Tenants have not paid the outstanding rent and did not apply to dispute the Notice and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Under section 26 of the Act, the Tenants must not withhold rent unless the Tenants have some authority under the Act to not pay rent. In this situation the Tenants had no authority under the Act to not pay rent.

I find that the Landlord is entitled to an Order of Possession effective **two days** after service on the Tenants. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the Landlord has established a total monetary claim of **\$3,737.91** comprised of the following:

Rent for January 2016	\$850.00
Rent for February 2016	\$850.00
Rent for March 2016	\$850.00
Rent for April 2016	\$850.00

Outstanding utilities	\$137.91
Filing fee (original application)	\$100.00
Filing fee (amended application)	\$100.00
TOTAL AWARDED	\$3,737.91

I order that the Landlord retain the security deposit of \$425.00 in partial satisfaction of the claim and I grant the Landlord a Monetary Order under section 67 for the balance due of **\$3,312.91**.

This Monetary Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Conclusion

The Tenants failed to pay rent and did not file to dispute the Notice to End Tenancy. .

The Landlord is granted an Order of Possession, may keep the security deposit and interest in partial satisfaction of the claim, and is granted a monetary Order for the balance due.

This decision is final and binding on the parties, except as 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: April 07, 2016

Residential Tenancy Branch

