



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LI-CAR MANAGEMENT GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord: OPR OPC MNR FF
For the tenants: CNR

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlord applied for an order of possession for unpaid rent or utilities and for cause, for a monetary order unpaid rent or utilities, and to recover the cost of the filing fee.

The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 3, 2016 (the “10 Day Notice”).

Two agents for the landlord attended the teleconference hearing. The tenants did not attend the hearing. As the tenants did not attend the hearing to present the merits of their application, the tenants’ application was **dismissed, without leave to reapply**, after the 10 minute waiting period had elapsed. The hearing continued with consideration of the landlord’s application.

The hearing process was explained to the agents, and the agents were given an opportunity to ask questions about the hearing process. Thereafter the agents gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

As the tenants did not attend the hearing, service of the landlord’s Notice of a Dispute Resolution Hearing (the “Notice of Hearing”), the Application for Dispute Resolution (the “Application”) and documentary evidence were considered. The agents provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on both respondent tenants each by registered mail on August 25, 2016.

The landlord provided two registered mail tracking numbers in evidence and confirmed that the name and address on both registered mail packages matched the names of the tenants and the rental unit address as both tenants continue to occupy the rental unit. The two registered mail tracking numbers are included on the cover page of this Decision for ease of reference.

Documents sent by registered mail are deemed served five days after mailing pursuant to section 90 of the *Act*. The tenant testified that the registered mail package was returned as “unclaimed” as of May 1, 2014. I find the landlord was duly served on the fifth day after mailing on April 13, 2014, in accordance with the *Act*. I note that refusal or neglect on the part of the respondent to accept a registered mail package does not constitute grounds for an Application for Review Consideration under the *Act*. The agents testified that tenant C.S. signed for and accepted her registered mail package on August 29, 2016 which is supported by the online registered mail tracking website information. The agents testified that tenant T.B. did not claim her registered mail package and it was eventually returned to sender. Section 90 of the *Act* deems that documents served by registered mail are deemed served five days after they are mailed. Therefore, tenant T.B. is deemed served with the registered mail package on August 30, 2016, whereas tenant C.S. was served on August 29, 2016, the day she signed for and accepted her registered mail package. I find that both tenants are sufficiently served as described above.

I have reviewed all 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

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on March 15, 2016. Monthly rent of \$650 was due on the first day of each month. The tenants paid a security deposit of \$325.00 at the start of the tenancy which the landlord continues to hold.

The landlord’s monetary claim of \$1,400.00 is comprised as follows:

Item 1	Unpaid rent for the month of August 2016	\$650.00
Item 2	Loss of rent for the month of September 2016	\$650.00
Item 3	Recovery of the cost of the filing fee	\$100.00
	TOTAL	\$1,400.00

The agents testified that the 10 Day Notice was served on the tenants' door on August 3, 2016. The effective date listed on the 10 Day Notice is August 15, 2016 which would automatically correct to August 16, 2016 pursuant to section 53 of the *Act* as section 90 of the *Act* states that documents served by posting to the door are deemed served three days after they are posted. Therefore, the tenants are deemed served with the 10 Day Notice on August 6, 2016.

The 10 Day Notice indicates that \$650.00 in unpaid rent was due on August 1, 2016. The agents testified that the tenants failed to pay any rent for August 2016 and that the landlord has also suffered a loss of rent for September 2016 as the tenants continue to occupy the rental unit and no money has been paid for use and occupancy for September 2016.

Analysis

Based on the undisputed testimony of the landlord and the undisputed documentary evidence before me, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

Order of possession – Section 55 of the *Act* requires that I must grant an order of possession once I have dismissed the tenant's application to dispute a notice to end tenancy as long as the notice to end tenancy complies with section 52 of the *Act*. I have reviewed the 10 Day Notice and I find it complies with section 52 of the *Act*. Therefore, **I grant** the landlord an order of possession pursuant to section 55 of the *Act* **effective two (2) days** after service on the tenant as the effective vacancy date has already passed and the tenants continue to occupy the rental unit.

Claim for unpaid rent and loss of rent – Firstly, as the tenants were served and did not attend the hearing, I find the Application of the landlord is unopposed by the tenants. Secondly, the agents testified that the tenants failed to pay \$650.00 for August 2016 rent, and that the landlord suffered a loss of September 2016 as no money has been paid in September and the tenants continue to occupy the rental unit. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the landlord has met the burden of proof and has established a monetary claim of **\$1,300.00** comprised of rent arrears and loss of rent.

As the landlord has succeeded with their application, **I grant** the landlord the recovery of the filing fee in the amount of **\$100.00**.

The landlord is holding a security deposit of \$325.00 which was paid by the tenants at the start of the tenancy and has accrued no interest since the start of the tenancy.

Monetary Order – I find that the landlord is entitled to a monetary order and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants' security deposit which has accrued no interest as follows:

Rent owing for August 2016	\$650.00
Loss of rent for September 2016	\$650.00
Recovery of the cost of the filing fee	\$100.00
Subtotal	\$1,400.00
<i>(Less tenants' security deposit with \$0.00 in interest)</i>	<i>-\$325.00</i>
TOTAL BALANCE OWING BY TENANTS TO LANDLORD	\$1,075.00

Conclusion

The landlord's application is fully successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The landlord has established a total monetary claim of \$1,400.00 as indicated above. The landlord is authorized to retain the tenants' full security deposit of \$325.00 in partial satisfaction of the landlord's monetary claim. The landlord is granted a monetary order under section 67 for the balance owing by the tenants to the landlord in the amount of \$1,075.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless 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: September 28, 2016

Residential Tenancy Branch