



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GATEWAY PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, OPR, FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- an order of possession for unpaid rent;
- a monetary order for unpaid rent; and
- recovery of the filing fee paid for this application from the tenant.

The tenant did not appear. The landlord's agent ("landlord") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered.

The landlord testified that he sent each tenant a separate copy of the Notice of Hearing, along with the Landlord's Application for Dispute Resolution and Monetary Order Worksheet (collectively referred to as the "dispute resolution hearing package") by registered mail. The landlord testified that he sent both registered mailings to the rental unit on October 3, 2016. The landlord provided both Canada Post Tracking Numbers orally. Taking into account that the online registered mail tracking information supports the undisputed testimony of the landlord and in accordance with sections 89 and 90 of the Act, I find that the tenants have been deemed served with the dispute resolution hearing package as of November 8, 2016, the fifth day after the registered mailing.

The landlord's agent also testified that on November 14, 2016, between 12:00 p.m. and 1:00 p.m., he provided the tenants with a copy of the documentary evidence by placing the document package in the tenants' mail slot.

Preliminary and Procedural Matters

At the hearing, I confirmed with the landlord the correct spelling of the tenant G.D.'s last name which is the spelling shown in the style of cause.

Issue(s) to be Decided

- Is the landlord entitled to an order for possession pursuant to section 55 of the *Act*?
- Is the landlord entitled to a monetary order for unpaid rent pursuant to s.67 of the *Act*?
- Is the landlord entitled to recover the filing fee for this application from the tenant pursuant to Section 72 of the *Act*?

Background and Evidence

A copy of the written tenancy agreement was submitted by the landlord. The landlord testified that both tenants signed the tenancy agreement on June 2, 2016 using their initials. The landlord also testified that a month to month tenancy commenced on June 1, 2016 and that rent was \$1,200 per month due on the first day of each month.

The landlord testified that no security deposit or pet deposit was collected even though the written tenancy agreement indicates that the tenants paid a security deposit of \$600.00 and a pet damage deposit of \$600.00 on June 2, 2016.

The landlord also submitted a copy of an Arbitrator's decision dated September 1, 2016 relating to the same parties and the same tenancy agreement. The date the tenancy commenced and the amount of rent due was disputed. The decision sets out a finding by the Arbitrator that the tenancy commenced on June 1, 2016 and that rent of \$1,200.00 is due on the 1st day of each month pursuant to the tenancy agreement.

The landlord testified that as of the date of the hearing, the tenant owes unpaid rent as follows:

June 1, 2016	\$1,200.00
July 1, 2016	\$ 250.00
August 1, 2016	\$ 100.00
September 1, 2016	\$ 100.00
October 1, 2016	\$ 100.00
November 1, 2016	\$ 100.00
Total Unpaid Rent	\$1,850.00

The landlord testified that sometime before noon on September 8, 2016, he served the tenants with a 10 Day Notice To End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), with an effective date of September 20, 2016, by posting it on the door of the rental unit. The landlord testified that the tenant did not pay the rent arrears after receiving the 10 Day Notice and

instead continued to accumulate further arrears by not paying the full amount of rent when due. After the expiration of that 10 Day period, the landlord applied for an Order of Possession.

As the landlord did not submit a copy of the 10 Day Notice prior to the hearing, he was asked to provide a copy of it to the Residential Tenancy Branch no later than 4 p.m. on November 29, 2016. The landlord submitted a copy of the 10 Day Notice as requested and a copy of the Proof of Service of the 10 Day Notice. The documentation confirmed the landlord's testimony.

The amount of unpaid rent set out in the 10 Day Notice and the landlord's application was \$1,650.00 as at September 29, 2016. However, at the hearing the landlord sought an additional \$200 for unpaid rent testifying that the tenants had also failed to pay the full amount of rent due for October and November 2016. The landlord sought to amend his application in this regard. The landlord is seeking a monetary order for unpaid rent in the sum of \$1,850.00 and an Order of Possession for the unpaid rent.

The landlord is also seeking a monetary order to recover of the \$100.00 filing fee.

Analysis

Based upon the undisputed evidence of the landlord provided during the hearing, and on the balance of probabilities, I find the following.

As the tenants were served with the dispute resolution hearing package and did not attend the hearing, I consider this matter to be unopposed by the tenants. As a result, I find the landlord's application is fully successful as I find the evidence supports the landlord's claim and is reasonable.

I find that the tenants were required to pay the monthly rent in the amount of \$1,200.00 due on the 1st day of each month commencing June 1, 2016, as per the tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on September 11, 2016, three days after its posting on the door of the rental unit.

I accept the evidence before me that the tenants have failed to pay the rent owed in full within five (5) days granted under section 46(4) of the *Act* and that they did not dispute the 10 Day Notice within that 5 day period.

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, November 21, 2016.

I accept the landlord's request to amend the landlord's application to include the full amount of unpaid rent in the total amount of \$1,850. I find that there is no prejudice to the tenants as they

knew or ought to have known the full amount of rent was due for the months of October and November, 2016.

I also find that the landlord is entitled to recover the \$100 filing fee.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order in the amount of \$1,950.00. The amount awarded to the landlord is the amount of the landlord's claim for unpaid rent owing from June 1, 2016 to November 1, 2016 and the \$100.00 filing fee.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord is granted a monetary Order in the amount of \$1,950.00 which must be served on the tenant(s) as soon as possible. Should the tenant(s) fail to comply with this monetary Order, it may be filed in the Small Claims Division of the Provincial Court 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: November 29, 2016

Residential Tenancy Branch