



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PRANG HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to obtain an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for authorization to retain all or part of the tenants' security deposit, and to recover the cost of the filing fee.

An agent for the landlord (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide his evidence orally. 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"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The agent testified that the Notice of Hearing, Application and documentary evidence were each served on the tenants by separate registered mail packages on October 27, 2016. The landlord provided two registered mail tracking numbers in evidence which have been included on the cover page of this decision for ease of reference. The agent testified that registered mail package mailed to tenant L.C. was signed for and accepted by tenant L.C. on November 3, 2016 which was confirmed on the online registered mail tracking website. The registered mail package address to tenant T.G. was unclaimed by tenant T.G. and returned to sender according to the online registered mail tracking website.

Based on the above, I find the tenants were duly served with the Notice of Hearing, Application and documentary evidence as follows. I find tenant L.C. was served as of November 3, 2016, the date she signed for an accepted the registered mail package. I find tenant T.G. was deemed served as of November 1, 2016 which is five days after it was mailed to the tenant's rental unit address and taking into account the tenants continue to occupy the rental unit. Furthermore, section 90 of the *Act* deems that

documents are served five days after they are served. Based on the above, I find that both respondents have been sufficiently served and as a result, the hearing continued without the respondents present.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

The agent testified that an oral tenancy began in approximately 2002 or 2003 and that the tenancy survived the sale of the building on September 9, 2003. The agent stated that current monthly rent is \$800.00 per month and due on the first day of each month. The tenants' monthly rent is subsidized with a contribution from the government. The agent stated that landlord does not dispute that the tenants paid a \$400.00 at the start of the tenancy which in the interests of fairness to the tenants will be considered January 1, 2002 as the exact date could not be presented in evidence.

The landlord confirmed service of the 10 Day Notice for Unpaid Rent or Utilities (the "10 Day Notice") dated October 3, 2016, by posting to the tenants' door on October 3, 2016. The 10 Day Notice included an effective vacancy date of October 13, 2016 and indicated that \$714.93 in unpaid rent arrears was owed as of October 1, 2016. According to the agent, the tenants did not dispute the 10 Day Notice and did not pay the amount indicated as owing within five days of receiving the 10 Day Notice.

The agent testified that as of the date of the hearing on December 14, 2016 the tenants continue to owe a total of \$714.93 in unpaid rent. The agent confirmed that the landlord is not seeking a two-day order of possession and is willing to agree to have an order of possession effective on December 31, 2016 at 1:00 p.m.

Analysis

Based on the undisputed documentary evidence and oral testimony provided by the agent during the hearing, and on the balance of probabilities, I find the following.

Order of possession - I find that the tenants failed to pay the full amount of rent owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. The

effective vacancy date of the 10 Day Notice is listed as October 13, 2016, which automatically corrects under section 53 of the *Act* to October 16, 2016 as the 10 Day Notice was posted to the tenants door and section 90 of the *Act* deems that documents are deemed served three days later when posted to the door.

Given the above, I find the tenants are conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the corrected effective vacancy date of the 10 Day Notice, which was October 16, 2016. The tenants continue to occupy the rental unit. Therefore, I grant the landlord an order of possession effective **December 31, 2016 at 1:00 p.m.** as requested by the agent during the hearing.

Claim for unpaid rent – As the tenants were served and did not attend the hearing, I find the Application of the landlord to be unopposed by the tenants. The agent testified that \$714.93 in unpaid rent is owed by the tenants as of the date of the hearing. Pursuant to section 26 of the *Act*, tenants 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 oral tenancy agreement which the agent stated was that rent was due and payable monthly on the first day of each month. I find the landlord has met the burden of proof and has established a monetary claim of **\$714.93** comprised of unpaid rent.

The landlord is holding a security deposit of \$400.00 which was paid by the tenants at the start of the tenancy and has accrued \$14.15 in interest since the start of the tenancy, which I find results in the landlord holding a total security deposit of \$414.15.

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

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 plus interest as follows:

ITEM DESCRIPTION	AMOUNT
1. Unpaid rent	\$714.93
2. Filing fee	\$100.00
Subtotal	\$814.93
<i>(Less tenants' security deposit of \$400.00 including \$14.15 interest)</i>	<i>-\$414.15</i>

TOTAL BALANCE OWING BY TENANTS TO LANDLORD	\$400.78
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Conclusion

The landlord's application is fully successful.

The landlord has been granted an order of possession effective December 31, 2016 at 1:00 p.m. 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 \$814.93 as indicated above. The landlord is authorized to retain the tenants' full security deposit of \$414.15 which includes interest 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 \$400.78. 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: December 15, 2016

Residential Tenancy Branch