



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE PORT ALBERNI PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord: OPR MNR MNSD MNDC 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, for a monetary order for unpaid rent or utilities, for authorization to keep all or part of the security deposit and pet damage deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, 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 February 8, 2017 (the “10 Day Notice”).

An agent for the landlord (the “agent”) 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 only.

The hearing process was explained to the agent, and the agent was given an opportunity to ask questions about the hearing process. Thereafter the agent gave affirmed testimony, was 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 Notice of a Dispute Resolution Hearing (the “Notice of Hearing”), the landlord’s Application for Dispute Resolution (the “Application”) and documentary evidence were considered. The agent provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on the two tenants separately by two registered mail packages on February 24, 2017 to the rental unit address and that the tenants continue to occupy the rental unit. The agent provided two registered mail tracking numbers in evidence and confirmed that each tenant was mailed their own registered mail package to the rental unit address. The 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*. According to the online registered mail tracking website information both registered mail packages were unclaimed by the tenants. I find the tenants were deemed served on the fifth day after mailing on February 29, 2017, in accordance with the *Act*. I note that refusal or neglect on the part of the tenants to pick up or accept a registered mail package does not constitute grounds for an Application for Review Consideration under the *Act*.

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.

Preliminary and Procedural Matters

The agent requested to withdraw the landlord's request to offset the tenants' security deposit and pet damage deposit under the *Act* and the landlord will instead await the tenants' written forwarding address pursuant to section 38 of the *Act*. The agent's request is permitted pursuant to section 64(3) of the *Act*.

In addition, the agent stated that the landlord's monetary claim was less than originally indicated on the landlord's Application due to an adding error. The agent clarified that although the landlord originally claimed \$2,250.00 the actual claim was now \$1,500.00 for loss of March 2017 rent as the tenants paid the \$565.00 owing for February 2017 although later than the required five days after being served with the 10 Day Notice. I find that a reduction of the monetary claim does not prejudice the tenants and permit the reduction pursuant to section 64(3) of the *Act*.

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. Monthly rent in the amount of \$1,500.00 was due on the first day of each month. The agent affirmed that the tenants paid a \$750.00 security deposit but did not pay the pet damage deposit as required and that no pet damage deposit has been paid by the tenants.

The landlord's reduced monetary claim is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Loss of March 2017 rent	\$1,500.00
TOTAL	\$1,500.00

The agent testified that the 10 Day Notice was served personally on the tenants on February 8, 2017 and that the tenants failed to pay the \$565.00 amount owing within the five days required as indicated on the 10 Day Notice. The agent stated that the \$565.00 amount owing was not paid until February 22, 2017 and that a receipt for “use and occupancy” was provided to the tenants. Furthermore, the agent stated that the tenants continue to occupy the rental unit resulting in the landlord suffering a loss of rent for the month of March 2017. The effective vacancy date listed on the 10 Day Notice was February 19, 2017. The agent is seeking an order of possession, loss of rent and the recovery of the cost of the filing fee.

Analysis

Based on the undisputed testimony of the agent and the undisputed documentary evidence before me, 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 as the tenants failed to attend the hearing this date and that the 10 Day Notice was undisputed as a result. The effective vacancy date of the 10 Day Notice is listed as February 19, 2017. I find the tenants are conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice, which was February 19, 2017. The tenants continue to occupy the rental unit. Therefore, I grant the landlord an order of possession effective **two (2) days** after service on the tenants. I find the tenancy ended February, 19, 2017 and that the tenants have been over-holding the rental unit since that date.

Claim for loss of 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 the landlord has suffered a loss of March 2017 rent in the amount of \$1,500.00. I find the landlord has met the burden of proof and has established a monetary claim of **\$1,500.00** comprised of loss of rent for the month of March 2017. The tenancy ended on February 19, 2017 and yet the tenants continue to over-hold the rental unit.

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 as follows:

ITEM DESCRIPTION	AMOUNT
1. Loss of March 2017 rent	\$1,500.00
2. Filing fee	\$100.00
TOTAL BALANCE OWING BY TENANTS TO LANDLORD	\$1,600.00

Given the above, and pursuant to section 67 of the *Act*, I grant the landlord a monetary order in the amount of **\$1,600.00**.

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 tenancy ended on February 19, 2017.

The landlord has established a total monetary claim of \$1,600.00. The landlord has been granted a monetary order under section 67 owing by the tenants to the landlord in the amount of \$1,600.00. 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: March 16, 2017

Residential Tenancy Branch