



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANTAGE WEST REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC MNSD MDNC FF

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the landlord to obtain an order of possession based on an undisputed 1 Month Notice to End Tenancy for Cause dated February 20, 2017 (the “1 Month Notice”), for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to keep 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 their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”), the 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 both tenants by personal service at the rental unit on April 5, 2017, which was witnessed by D.M. The agent provided a signed letter from D.M. in evidence to support that he witnessed the agent serve the tenants. Based on the evidence and undisputed testimony before me, I accept that the tenants were sufficiently served on April 5, 2017 with the Notice of Hearing, Application and documentary evidence.

Preliminary and Procedural Matter

The agent stated that since filing their Application, the landlord has suffered a loss of May 2017 rent in the amount of \$1,400.00 as the tenants continue to occupy the rental unit. The agent made note of the possible loss of May rent on the monetary order worksheet submitted with the Application. The agent requested to include the loss of

May 2017 rent as the tenants have refused to vacate the rental unit. As the tenants continue to occupy the rental unit, I allow the landlord to amend their monetary claim to \$2,800.00 comprised of loss of April 2017 rent of \$1,400.00 and loss of May 2017 rent of \$1,400.00 pursuant to section 64(3) of the *Act*. I find it is reasonable that the tenants would be aware or ought to be aware that rent is due in accordance with the tenancy agreement and given that the tenants continue to occupy the rental unit.

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?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

The landlord submitted a copy of the tenancy agreement in evidence. A month to month tenancy began on October 1, 2016. Monthly rent in the amount of \$1,400.00 is due on the first day of each month. A security deposit of \$700.00 was paid by the tenants at the start of the tenancy which the landlord continues to hold.

The landlord submitted a copy of the 1 Month Notice in evidence. The agent testified that the 1 Month Notice was posted on the tenants' door on February 20, 2017 and was dated February 20, 2017. The effective vacancy date listed on the 1 Month Notice is listed as March 31, 2017. The landlord listed a total of three causes on the 1 Month Notice. According to the agent, the tenants did not dispute the 1 Month Notice and continue to occupy the rental unit while the landlord suffers a loss of rent. The landlord is seeking a two-day order of possession and compensation for loss of rent, plus the recovery of the cost of the filing fee.

Analysis

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

Order of Possession – Firstly, as the tenants were served and did not attend the hearing, I find that this Application is undisputed by the tenants. Secondly, section 90 of the *Act* states that document served by posting to the door are deemed served three days after they are posted. Therefore, I find the tenants were deemed served with the 1 Month Notice on February 23, 2017, which is three days after it was posted to the rental

unit door on February 20, 2017. Section 47 of the *Act* states that if the tenants do not dispute the 1 Month Notice within ten days of the date of service, the tenants are conclusively presumed to have accepted that the tenancy ends on the effective vacancy date listed on the 10 Day Notice which in the matter before me was March 31, 2017. As the 1 Month Notice was deemed served on February 23, 2017 and the tenants did not dispute the 1 Month Notice, I find the tenancy ended on March 31, 2017, which is the effective vacancy date listed on the 1 Month Notice. Accordingly, I grant the landlord an order of possession effective **two (2) days** after service on the tenants.

Claim for loss of rent – The agent testified that the landlord has suffered a loss of rent of \$1,400.00 for April 2017, and \$1,400.00 for May 2017 as the tenants continue to occupy the rental unit and have not paid any amount for April or May of 2017. Given the above, I find the tenants have been over-holding in the rental unit and have caused the landlord to suffer loss of rent of \$2,800.00 as claimed.

As the landlord has succeeded with their application, I grant the landlord the recovery of the **\$100.00** filing fee. The tenants' security deposit of \$700.00 has accrued \$0.00 in interest since the start of the tenancy.

Monetary Order – I find that the landlord is entitled to a monetary claim 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:

1. Loss of April 2017 rent	\$1,400.00
2. Loss of May 2017 rent	\$1,400.00
3. Recovery of the cost of the filing fee	\$100.00
Subtotal	\$2,900.00
<i>(Less Tenants' Security Deposit of \$700.00 with \$0.00 in interest)</i>	<i>-(\$700.00)</i>
TOTAL OWING BY THE TENANTS TO LANDLORD	\$2,200.00

Given the above, I authorize the landlord to retain the tenants' full security deposit of \$700.00 in partial satisfaction of the landlord's monetary claim and I grant the landlord a monetary order for the balance owing by the tenants to the landlord in the amount of \$2,200.00.

Conclusion

I find that the landlord has proven their claim and is 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.

I find that the landlord has established a total monetary claim of \$2,900.00 as described above. I authorize the landlord to retain the tenants' full security deposit of \$700.00 in partial satisfaction of the landlord's monetary claim, and I grant the landlord a monetary order under section 67 for the balance owing by the tenants to the landlord in the amount of \$2,200.00. 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: May 9, 2017

Residential Tenancy Branch