



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenants: CNR FFT

Landlord: OPRM-DR FFL

Introduction

This hearing dealt with applications from the tenants and the landlord pursuant to the *Residential Tenancy Act* (the *Act*) for:

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46 of the *Act*; and
- the recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

The landlord applied for:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*;
- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application from the tenants pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The landlord confirmed that he was in receipt of the tenants' application materials; however, the tenants failed to include their evidence in the package provided to the landlord. As such, I advised the parties that the tenants' evidence would be excluded from my consideration as it was not served to the respondent as required by Rule 3.5 of the Residential Tenancy Branch Rules of Procedure. The landlord testified that he served Tenant S.B. his application and evidence package in person on May 15, 2018, and this

was confirmed by the tenant. Therefore, I find that Tenant S.B. was duly served with the Notice of Hearing information, in accordance with section 89 of the *Act*.

The landlord testified that he served Tenant J.H. by Canada Post registered mail on May 16, 2018, and provided a tracking number as proof of service. The landlord stated that a Canada Post delivery notice card was left in his mailbox, and he left the card at the tenants' door. Tenant J.H. denied receipt of the notice card or the registered mail package. Tenant J.H. suggested that the notice card might have blown away as he has no proper mailbox at his rental unit.

Section 90 of the *Act* sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a document is considered or 'deemed' received on the fifth day after mailing, if it is served by mail (ordinary or registered mail).

Residential Policy Guideline 12. Service Provisions provides guidance on determining deemed receipt, as follows:

Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

In this case, Tenant J.H. has not provided any evidence to rebut the deemed receipt presumption, only a speculation that the delivery notice card may have blown away. Therefore, in the absence of a preponderance of evidence to the contrary, I find that Tenant J.H. was deemed served with the Notice of Hearing information on May 21, 2018, the fifth day after mailing, in accordance with section 89 of the *Act*.

As a procedural matter, I explained to both parties that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession, if the tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, I explained to both parties that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to

prove the reasons for ending the tenancy, transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute, and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. This tenancy will end at 1:00 p.m. on July 31, 2018, by which time the tenants and any other occupants will have vacated the rental unit.
2. By 5:00 p.m. on June 29, 2018, the tenants will pay the landlord a total amount of \$1,805.00 in full satisfaction of the following outstanding rent and utilities owed: the remaining amount of rent owing for the month of May 2018, in the amount of \$800.00; the remaining amount of rent owing for the month of June 2018, in the amount of \$800.00; and the amount of utilities owed up to the end of June 2018, in the amount of \$205.00. The landlord will provide the tenants with a receipt for these payments by noting the receipts with the condition that the payments are "for use and occupancy only".
3. By 5:00 p.m. on July 1, 2018, the tenants will pay the landlord a total amount of \$1,550.00 in full satisfaction of the \$1,400.00 rent payment for July 2018, and \$150.00 for utilities owed up until the end of the tenancy on July 31, 2018. The landlord will provide the tenants with a receipt for this payment by noting the receipt with the condition that the payment is "for use and occupancy only".
4. This tenancy ends by way of this settlement and the parties agree that: the landlord's 10 Day Notice dated May 4, 2018, is cancelled and of no further force or effect; the landlord's application for dispute resolution in its entirety is cancelled; and the tenants' application for dispute resolution in its entirety is cancelled.
5. Both parties agreed that the terms of this settlement as outlined above constitute a final and binding resolution of the tenants' and the landlord's applications and all issues currently under dispute at this time, and that they agreed free of any duress or coercion.

The parties are still bound by all of the rights, responsibilities, terms and conditions of the tenancy agreement, the *Act*, and the associated regulations.

As both parties applied to recover the filing fee from each other, and as both parties came to a settlement, the applications offset each other, and as such, each party will bear their own costs for the filing fee.

Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue to the landlord the attached Order of Possession to be served on the tenants by the landlord **only** if the tenants fail to vacate the rental unit by 1:00 p.m. on July 31, 2018. 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.

Further to this, I issue to the landlord the attached Monetary Order in the amount of \$3,355.00 to be served on the tenants by the landlord **only** if the tenants fail to pay the landlord the \$3,355.00 by 5:00 p.m. on July 1, 2018. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. If the tenants only make a partial payment and not the total amount, this partial payment must be accounted for if the landlord is enforcing the Monetary Order.

The landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated May 4, 2018, is cancelled and is of no force or effect.

This decision 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: June 29, 2018.

Residential Tenancy Branch