



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an application by the landlord for an Order of Possession and a Monetary Order for unpaid rent or utilities. The landlord also applied to keep all or part of the pet damage or security deposit; for money owed or compensation for damage or loss under the Residential Tenancy Act (referred to as the *Act*), regulation or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The landlord made the application and served each of the tenants with a copy of the application and Notice of Hearing documents by registered mail. The Canada Post tracking numbers were provided as documentary evidence. Section 90 of the *Act* provides that a document is deemed to have been served five days after such mailing. Based on this, and in the absence of any evidence from the tenants to refute this, I find the tenants were served the hearing documents as required by the *Act*.

The landlord's agent attended the hearing to give affirmed testimony and provided documentary evidence in advance of the hearing. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Act*. All of the testimony and documentary evidence submitted was carefully considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order for outstanding rent relating to August, September and October, 2013?
- Is the landlord entitled to keep the security and pet damage deposits in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that the tenancy began on January 1, 2012 for a fixed term of one year after which it reverted to a month-to-month basis. The tenants paid a security deposit of \$392.50 on December 15, 2011 and a pet damage deposit of \$392.50 on December 31, 2011, both of which the landlord still retains. Currently, rent in the amount of \$785.00 is payable by the tenant on the first day of each month.

The landlord's agent testified that the tenant failed to pay rent on August 1, 2013. As a result, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on August 2, 2013 by positing the notice to the tenants' door with a witness. The notice and a signed proof of service bearing the witness's signature were provided as evidence for the hearing. The notice shows an amount of \$785.00 for unpaid rent due on August 1, 2013 with an expected date of vacancy of August 12, 2013.

The landlord's agent testified that the tenants also failed to pay for September and October, 2013 rent in the amount of \$785.00 for each month. As a result, the landlord seeks to recover lost rent from the tenants for a total amount of \$2,355.00.

Analysis

The tenant failed to attend the hearing or provide any written submissions prior to this hearing taking place. In the absence of the undisputed testimony and evidence provided by the landlord's agent, I make the following determination.

Section 46(4) and (5) of the *Residential Tenancy Act* states that within five days of a tenant receiving a Notice to End Tenancy for Unpaid Rent or Utilities, a tenant must pay the overdue rent or apply for dispute resolution; if the tenant fails to do either, then they are conclusively presumed to have accepted the notice to end tenancy and they must vacate the rental unit on the date to which the notice relates.

Having examined the notice to end tenancy, I find that the contents complied with the requirements of the *Act*.

As a result, I accept that the tenants were served by the landlord with the notice to end tenancy on August 2, 2013 by positing it to the tenants' door. Section 90 of the *Act* provides that a document is deemed to have been served three days after such mailing. Therefore, the tenants had until August 10, 2013 to pay the overdue rent or apply to dispute the notice as required by the *Act*, neither of which the tenants did. As a result, I find that the tenants are conclusively presumed to have accepted that the tenancy

ended as per the notice, and therefore the landlords are entitled to an Order of Possession.

In relation to the monetary claim, I award the landlord the outstanding rent for the months of August and September, 2013. Since the tenants are still occupying the rental suite and have not paid rent for October, 2013, the landlord may not be able to re-rent the unit until the middle of the month. Therefore, I also award the landlord half of the rent payable for October, 2013 in the amount of \$392.50. Therefore the landlord is awarded a total of \$1,962.50.

As the landlord has been successful in this matter, the landlord is also entitled to recover from the tenants the \$50.00 filing fee for the cost of this application pursuant to Section 72(2) (b) of the *Act*. Therefore, the total amount payable by the tenants to the landlord is \$2,012.50.

As the landlord already holds \$785.00 in security and pet damage deposits, I order the landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the *Act*. As a result, the landlord is awarded \$1,227.50.

Conclusion

For the reasons set out above, I grant the landlord an Order of Possession effective **2 days after service on the tenants**. This order may then be filed and enforced in the Supreme Court as an order of that court.

I also grant the landlord a Monetary Order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$1,227.50**. This order must be served on the tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: October 02, 2013

Residential Tenancy Branch

