



Dispute Resolution Services

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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, MND, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid and/or loss of rent, storage fees, late fees; and, authorization to retain the security deposit and pet deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for the amounts claimed?
3. Is the landlord authorized to retain the security deposit and pet deposit?

Background and Evidence

The one-year fixed term tenancy commenced November 1, 2011 and the tenants paid a security deposit of \$400.00 and a pet deposit of \$200.00. The tenancy agreement provides that rent of \$800.00 was payable on the 1st day of every month and that after the expiration of the fixed term the tenancy would continue on a month-to-month basis.

The parties provided undisputed testimony that the rent had increased to \$810.00 after the first year of tenancy and that the tenants were provided a storage unit at a cost of \$60.00 for a total monthly obligation of \$870.00.

It was undisputed that on August 2, 2013 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the door of the rent unit. The Notice indicates that \$870.00 was outstanding as of August 1, 2013 and had a stated effective date of August 12, 2013.

It was undisputed that a partial payment was received for the month of August 2013. The landlord submitted that \$400.00 was received. The tenant submitted that \$470.00 was paid. The landlord did not further refute the tenant's submission that \$470.00 was paid.

Although one tenant claimed to have moved out of the rental unit on August 1, 2013 the other co-tenant continued to occupy the rental unit. The tenant that remained in possession of the unit submitted that she is in the process of removing her belongings.

Both tenants confirmed that they have no objection to the landlord receiving an Order of Possession.

With respect to the landlord's monetary claims, the landlord seeks to recover the balance of unpaid rent for August 2013 and loss of rent for the month of September 2013. In addition, the landlord seeks to recover loss of storage fees for September 2013 and late fees for both August and September 2013. The addendum to the tenancy agreement provides for late fees of \$25.00 where rent is late or not paid.

In response to the landlord's monetary claims one of the tenants submitted that she withheld rent for August 2013 because the landlord did not treat the unit for bedbugs as required. The tenant acknowledged that she had not obtained authorization to withhold rent and has not, to date, filed her own Application for Dispute Resolution.

Documentary evidence provided for this proceeding included a copy of: the tenancy agreement, including the addendums; the 10 Day Notice; and, Proof of Service of the 10 Day Notice.

Analysis

Section 26 of the Act provides that a tenant is required to pay rent, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. The Act provides very limits circumstances when a tenant may withhold rent.

In this case, I was provided undisputed evidence that the tenants were required to pay rent and storage fees of \$870.00 on the 1st day of every month. The tenants acknowledge they were not given authority to withhold rent. Nor was I provided any other legal basis to withhold rent as provided under the Act. Therefore, I find the tenants were obligated to pay the landlord \$870.00 on August 1, 2013 and the tenants violated their tenancy agreement and the Act by failing to do so.

As the tenants were informed during the hearing, I have not considered their position concerning bedbugs further because it is not relevant to the matter of paying rent for the reasons outlined above. Rather, the tenants remain at liberty to pursue a claim in damages against the landlord by filing their own Application for Dispute Resolution. The tenants are encouraged to contact the Residential Tenancy Branch for more information prior to filing an Application for Dispute Resolution.

Section 46 of the Act provides that where a tenant does not pay all of the rent due to the landlord is at liberty to issue a 10 Day Notice to End Tenancy. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I accept the undisputed evidence before me that the landlord posted a 10 Day Notice end the tenancy for unpaid on the door of the rental unit on August 2, 2013. As the 10 Day Notice was posted it is deemed to be received three days later under section 90 of the Act. Accordingly, the effective date of the Notice automatically changes to comply with the Act and reads August 15, 2013 pursuant to sections 46 and 53 of the Act

Since the tenants did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy ended on August 15, 2013 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenants.

Based upon the evidence before me, I find the landlord entitled to recover unpaid rent for August 2013 in the amount of \$400.00. Since the tenants have not returned possession of the unit to the landlord to date, I find the landlord entitled to recover loss of rent and storage fees for the month of September 2013.

Upon review of the tenancy agreement and addendum, I find the landlord has a late payment clause that complies with the Residential Tenancy Regulations. As such, I grant the landlord's request for a late fee for August 2013. I do not award a late fee for September 2013 as a landlord's ability to charge a late fee is tied to a tenancy agreement and the tenancy had come to an end in August 2013.

As the parties were informed during the hearing, the landlord remains at liberty to file a subsequent Application for Dispute Resolution to recover for loss of revenue for October 2013 and damage and/or cleaning as appropriate.

I authorize the landlord to retain the tenants' security deposit and pet deposit in partial satisfaction of the amounts awarded to the landlord. I also award the landlord the filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid Rent: August 2013	\$ 400.00
Late fee: August 2013	25.00
Loss of revenue: September 2013	870.00
Filing fee	50.00
Less: security deposit and pet deposit	<u>(600.00)</u>
Monetary Order	\$ 745.00

The landlord must serve the Monetary Order upon the tenants and may enforce it in Provincial Court (Small Claims) as necessary.

As co-tenants are jointly and severally liable, the landlord is at liberty to pursue one or both co-tenants for the amount owed to the landlord and it is upon the co-tenants to apportion the liability among themselves.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenants. The landlord has been authorized to retain the security deposit and pet deposit in partial satisfaction of amounts owed to the landlord and the landlord has been provided a Monetary Order for the balance of \$745.00.

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 10, 2013

Residential Tenancy Branch

