



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capilano Property Management Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

The landlord had originally named a second tenant, J.A., as a respondent and served J.A. with a copy of the claim and the notice of hearing by sending those documents to the rental unit. The tenant testified that J.A. has not resided in the rental unit for 3 years. I am unable to find that J.A. has been properly served with notice of the claim against him and for that reason, I dismiss the claim as against J.A. The style of cause in this decision reflects that dismissal.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent and loss of income?

Background and Evidence

The tenancy began on or about July 1, 2010 at which time the tenant paid a security deposit of \$387.50. At the beginning of the tenancy, the tenant was obligated to pay \$775.00 per month in rent, in advance on the first day of each month. The rent was raised to \$785.00 per month during. The tenant failed to pay rent in the month of October 2013 and on October 2, the landlord served the tenant with a notice to end tenancy by posting it to the door of the rental unit. The tenant acknowledged having received the notice on that date.

The tenancy agreement provides that if the tenant does not pay rent on the first day of the month, she is liable for a \$25.00 late payment fee. The tenant is also obligated to pay \$10.00 per month for storage pursuant to a supplementary agreement.

At the hearing, the parties acknowledged that some payments had been made since the landlord filed their application. They agreed that the Ministry of Employment and Income Assistance (the "Ministry") made 3 payments of \$387.50 each, one in October, one in November and one in December. They further agreed that the tenant made a \$200.00 payment on October 18 and a \$300.00 payment on December 4.

The tenant claimed that the Ministry made 2 payments in the month of November, each for \$387.50, as the landlord had issued 2 receipts. The tenant did not submit those receipts into evidence, but read the details and the receipt numbers into evidence. The tenant had a receipt numbered 16993 and dated November 1 and a second receipt numbered 16999 and dated November 21. The tenant testified that she did not know why the Ministry made 2 payments when they had previously made just one payment each month of her tenancy for one half of the rent, but argued that the receipts proved that the landlord had received 2 payments for the month of November. The landlord's agents who appeared at the hearing did not have a copy of the receipt book, but noted that their financial ledger showed receipt of just one payment for the month of November.

For clarity, the tables below show the amounts payable and the positions of the parties:

Amount payable for the period from October – December 2013	
October rent	\$785.00
October late payment fee	\$ 25.00
October storage fee	\$ 10.00
November rent	\$785.00
December rent (only half of the rent is claimed)	\$392.50
Total:	\$1,997.50

Positions of the parties with respect to amounts paid			
Landlord		Tenant	
October Ministry payment	\$387.50	October Ministry payment	\$387.50
October 18 payment	\$200.00	October 18 payment	\$200.00
-	-	November Ministry payment	\$387.50
November Ministry payment	\$387.50	November Ministry payment	\$387.50
December 4 payment	\$200.00	December 4 payment	\$200.00
Total:	\$1,175.00	Total:	\$1,562.50

Analysis

I find that the tenant did not pay rent for the month of October and on October 2 was served with a notice to end tenancy for non-payment of rent. The tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts I find that the landlord is entitled to an order of possession. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

As for the monies owed, the one payment in dispute is the second November payment for which the tenant has a receipt. I accept that the tenant has 2 receipts for 2 payments in November. However, the tenant was unable to explain why the Ministry would issue a second payment for the month of November when throughout the 3 year tenancy it has paid just half of her monthly rent. I find it more likely than not that the landlord mistakenly issued 2 receipts for the same payment in an effort to communicate to the tenant that the payment was accepted for use and occupancy only. I therefore find that only one payment was made by the Ministry in November and I accept the landlord's payment history as accurate.

I find that the tenant was obligated to pay a total of \$1,997.50 for the period in question (October – December 15, 2013) and that as of the date of this hearing, she has paid just \$1,175.00. I find that the landlord is entitled to recover the balance of \$822.50 and I award the landlord that sum. I further find that as the landlord has been successful in this application, he is entitled to recover the \$50.00 filing fee for a total entitlement of \$872.50. I order that the landlord retain the \$387.50 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$485.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession and a monetary order for \$485.00. The landlord will retain the security deposit.

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: December 05, 2013

Residential Tenancy Branch

