



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, MNSD, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent, for authority to retain the tenant's security deposit and to recover the filing fee.

The two parties attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

No party raised any issue regarding service of the evidence.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, a monetary order and to recover the filing fee?

Background and Evidence

The undisputed evidence was that this tenancy began on September 1, 2010, monthly rent is currently \$709, and a security deposit of \$349.50 was paid by the tenant at the beginning of the tenancy.

The landlord gave evidence that on October 2, 2013, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), by attaching it to the tenant's door, listing unpaid rent of \$709 as of October 1, 2013. The effective vacancy date listed on the Notice was October 12, 2013.

Section 90 of the Act states that documents served by attaching to the door are deemed delivered three days later. Thus the tenant was deemed to have received the Notice on October 5, 2013, and the effective move out date is automatically changed to October 15, 2013, pursuant to section 53 of the Act. In response to my question, the tenant acknowledged receiving the Notice.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution.

The landlord stated that the tenant has not made any payments of rent since issuance of the Notice and as of the date of the hearing, the tenant owed \$2127 in unpaid rent for October, November, and December, or \$709 each month.

The tenant acknowledged owing this amount; however, the tenant further stated that she has been in consistent contact with the resident managers about the delays in her assistance cheques. The parties here acknowledged working towards continuing the tenancy pending prompt payment of the rent deficiency.

Analysis

Based on the oral and written evidence and on a balance of probabilities, I find as follows:

I find the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent, did not pay the outstanding rent or file an application for dispute resolution in dispute of the Notice within five days of service and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I therefore find that the landlord is entitled to an order of possession for the rental unit effective two days after service of the order upon the tenant.

I also find that the landlord is entitled to a monetary award of \$2177 comprised of outstanding rent of \$2127 through December, 2013, and the \$50 filing fee paid by the landlord for this application.

Conclusion

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

At the landlord's request, I allow the landlord to retain the tenant's security deposit of \$349.50 in partial satisfaction of the claim.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due, in the amount of \$1827.50, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

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* and is being mailed to both the applicant and the respondent.

Dated: December 04, 2013

Residential Tenancy Branch

