



# Dispute Resolution Services

Page: 1

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 was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for an order of possession for unpaid rent or utilities, a monetary order for unpaid rent or utilities, for authorization to keep all or part of the tenant's security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

An agent for the landlord (the "agent") attended the teleconference hearing. During the hearing the agent was given the opportunity to provide his evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application"), and documentary evidence was considered. The agent testified that the Notice of Hearing, Application and documentary evidence was served on the tenant by registered mail on April 24, 2014. The agent stated that the registered mail package was addressed to the tenant and addressed to the address of the rental unit and that tenant continues to occupy the rental unit. The landlord provided a registered mail tracking number orally during the hearing. According to the Canada Post online registered mail tracking website, the registered mail package was not claimed and was returned to sender as of May 21, 2014. Documents served by registered mail are deemed served five days later under section 90 of the *Act*. Therefore, I find the tenant was deemed served with the Notice of Hearing, Application and documentary evidence as of April 29, 2014.

### Preliminary and Procedural Matters

During the hearing, the agent requested to reduce the landlord's monetary claim from \$1,540.00 as indicated in the landlord's application to \$570.00, which is comprised of the unpaid portion of rent in the amount of \$545.00 for June 2014, plus a late fee of \$25.00 for the month of June 2014. I find that a reduction in the landlord's monetary claim does not prejudice the tenant and that although the landlord had only applied for unpaid rent for April and May of 2014, that it is reasonable that the tenant could expect that the landlord would be seeking unpaid rent for June 2014. As a result, I permit the landlord to reduce their monetary claim to the unpaid portion of June 2014 rent of \$545.00 plus the late fee of \$25.00, plus the request for the recovery of the filing fee.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- Is the landlord entitled to an order of possession under the *Act*?
- What should happen to the tenant's security deposit under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy agreement between the parties began on July 1, 2011 and reverted to a month to month tenancy after June 30, 2012. Monthly rent at the start of the tenancy was \$825.00 due on the first day of each month. Although the agent stated that rent was increased to \$845.00 per month, the landlord failed to submit evidence to prove that a Notice of Rent Increase was served on the tenant in accordance with the *Act*, and the agent stated that he did not know when rent was increased. A security deposit of \$412.50 was paid by the tenant at the start of the tenancy, which the landlord continues to hold.

The agent stated that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated April 2, 2014 by posting the 10 Day Notice to the tenant's door on April 2, 2014. The amount owing listed on the 10 Day Notice was \$845.00 due April 1, 2014, and the stated effective vacancy date was listed as April 12, 2014.

There was no evidence presented that the tenant disputed the 10 Day Notice or paid the amount of rent owing within 5 days of the deemed service date of April 5, 2014. The agent stated that the tenant eventually paid April 2014 rent late on May 10, 2014.

including a \$25.00 late fee, and paid May 2014 rent late on May 30, 2014 with the \$25.00 late fee. The agent also stated that the tenant paid \$300.00 towards June 2014 rent on June 5, 2014, and continues to owe \$545.00 owing for June 2014 rent, plus the late fee. The agent stated that the landlord issued a receipt to the tenant for “use and occupancy only” for each of the payments made by the tenant described above.

The amendment to the tenancy agreement submitted in evidence supports the amount of \$25.00 per month for late payments of rent.

### Analysis

Based on the documentary evidence, undisputed testimony of the landlord, and on the balance of probabilities, I find the following.

#### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

**Order of Possession** – I accept the undisputed testimony of the agent that the tenant failed to pay the full amount of rent owing for the month of April 2014 after being deemed served with the 10 Day Notice dated April 2, 2014 on April 5, 2014 or dispute the 10 Day Notice within 5 days after April 5, 2014. I find the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective date of the 10 Day Notice which automatically corrects under the *Act* to April 15, 2014.

The tenant continues to occupy the rental unit and I accept that the landlord has not reinstated the tenancy by issuing receipts for “use and occupancy only” for April, May and June of 2014, and that a portion of June 2014 rent remains unpaid which will be addressed below. Given the above and taking into account the landlord’s application for

an order of possession based on an undisputed 10 Day Notice, I grant the landlord an order of possession effective **two (2) days** after service on the tenant. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

**Monetary claim of landlord** – I am not satisfied that the landlord has proven that monthly rent was increased to \$845.00 per month as the landlord submitted a tenancy agreement which indicates that monthly rent is \$825.00 per month, and the landlord failed to submit a Notice of Rent Increase document to support that monthly rent was increased to \$845.00 in accordance with the *Act*. In addition, the agent was unable to recall when rent was increased.

As a result, I will use the amount listed on the written tenancy agreement submitted in evidence as the current amount of rent due, which is \$825.00 per month. I accept the agent's undisputed testimony that the tenant paid \$300.00 of June 2014 rent on June 5, 2014, and continues to owe \$525.00 in unpaid rent for the month of June 2014.

Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find the tenant breached section 26 of the *Act* by failing to pay April 2014 and May 2014 rent on time, and only paying \$300.00 of the \$825.00 rent due on June 1, 2014. Therefore, I find the landlord is owed **\$525.00** for unpaid rent for the month of June 2014. I find that the landlord is owed a late fee of **\$25.00** for the month of June 2014, as \$525.00 in rent remains owing for the month of June 2014 as of the date of this Decision.

Given the above, I find the landlord has met the burden of proof and has established a monetary claim of \$550.00 comprised of \$525.00 owing for the remainder of June 2014 rent, plus \$25.00 for the June 2014 late fee.

As the landlord's application had merit, I grant the landlord the recovery of the \$50.00 filing fee.

**Monetary Order** – I find that the landlord has established a total monetary claim of **\$600.00** comprised of \$525.00 for the unpaid portion of June 2014 rent, \$25.00 late fee and the \$50.00 filing fee. I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit of \$412.50, which the landlord continues to hold, which has accrued \$0.00 in interest to date.

**I ORDER** the landlord to retain the tenant's full security deposit of \$412.50 partial satisfaction of the landlord's monetary claim, and I grant the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in

the amount of **\$187.50**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

The landlord has been granted an order of possession effective **two (2) days** after service on the tenant. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

The landlord has established a total monetary claim of \$600.00 as indicated above. The landlord has been ordered to retain the tenant's full security deposit of \$412.50 in partial satisfaction of the claim. The landlord has been granted a monetary order under section 67 for the balance due of \$187.50. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 11, 2014

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Residential Tenancy Branch

