



Dispute Resolution Services

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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 by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a Monetary Order to recover rent owed?
- Is the landlord entitled to keep the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this fixed term tenancy started on January 23, 2014 and reverted to a month to month tenancy on July 31, 2014. Rent for this unit is \$850.00 per month due on the 1st of each month. The tenant paid a security deposit of \$425.00 on January 08, 2014

The landlord's agent testified that the tenant failed to pay all the rent on July 01, 2014 leaving an unpaid balance of \$140.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on July 02, 2014. This was posted on the tenant's door and was deemed to have been served three days after posting. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on July 14, 2014. The tenant did not pay the outstanding rent or file an application to dispute the Notice. Since that time the tenant has failed to pay rent for August and September, 2014 of \$1,700.00. The total amount of unpaid rent is now \$1,840.00.

The landlord testified that the tenancy agreement provides for a fee of \$25.00 being charged for late fees for any month in which rent is not paid on the day it is due. The landlord seeks to recover a late fee of \$25.00 for August and September, 2014.

The landlord has applied to retain the tenant's security deposit of \$425.00 in partial payment of the rent arrears. The landlord has also applied for an Order of Possession to take effect on September 30, 2014.

The tenant does not dispute the landlords claim to recover unpaid rent or late fees and understands that the landlord is entitled to an Order of Possession.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 26 of the *Act* which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I am satisfied that there is outstanding rent for July, 2014 of \$140.00 and outstanding rent for August and September, 2014 of \$1,700.00. Consequently, it is my decision that the landlord is entitled to recover these amounts to a total of **\$1,840.00** and will receive a Monetary Order pursuant to s. 67 of the *Act*.

With regard to the landlord's claim to recover \$50.00 for late fees for August and September, 2014; I refer the parties to the Residential Tenancy Regulations s. 7(1)(d) and s. 7(2)(e) which states:

7 (1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I have reviewed the tenancy agreement and find there is a clause contained in the agreement that provides for an administrative fee for late fees. Consequently, pursuant to s. 7(1)(d) of the regulations I find the landlord is entitled to recover \$50.00 in late fees for August and September, 2014.

I Order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of \$425.00 in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding.

The landlord will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

Outstanding rent	\$1,840.00
Late fees	\$50.00
Filing fee	\$50.00
Less security deposit and accrued interest	(-\$425.00)
Total amount due to the landlord	\$1,515.00

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was posted on the tenant's door it was deemed served three days after posting on July 05, 2014. The effective date of the Notice is amended to July 15, 2014 pursuant to s. 53 of the *Act*. The tenant did not pay all the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As this date has since passed I grant the landlord an Order of Possession effective on September 30, 2014 pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,515.00** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the Respondent and is enforceable through the Provincial Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord on September 30, 2014. This Order must be served on the Respondent and may be filed in the Supreme Court 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: September 22, 2014

Residential Tenancy Branch

