



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 MNR, MNSD, MNDC, FF, O

Introduction

This hearing was convened by way of conference call concerning an Application for Dispute Resolution (the “Application”) made by the Landlord for a Monetary Order for unpaid rent, to keep the Tenant’s security deposit, for loss of December, 2014 rent and to recover the filing fee.

The Landlord also applied for ‘Other’ issues which were documented in the details section of the Application as a request for an Order of Possession based on a breach of a notice given by the Tenant to end the tenancy.

Preliminary Issues

An agent for the Landlord appeared for the hearing and provided affirmed testimony as well as written evidence in advance of the hearing. There was no appearance by the Tenant during the 10 minute duration of the hearing and no submission of written evidence prior to the hearing. As a result, I turned my mind to the service of the Notice of Hearing documents by the Landlord to the Tenant.

The Landlord’s agent testified that he served the Tenant with a copy of the Application and Notice of Hearing documents by registered mail to the rental unit address on December 5, 2014. The Landlord’s agent provided the Canada Post tracking number in written evidence to support this method of service.

Section 90(a) of the Residential Tenancy Act (the “Act”) explains that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by a failure or neglect to pick up mail or use this reason alone for making a review application of this decision. As a result, I accept the Landlord’s agent’s evidence and find that, pursuant to the Act, the Tenant was deemed to have received the required documents for this hearing on December 10, 2014.

I proceed to hear the undisputed evidence of the Landlord as follows. The Landlord explained at the start of the hearing that since making this Application, the Tenant had vacated the rental suite on December 18, 2014 and did not require an Order of Possession. Therefore, I dismissed the Landlord's Application for an Order of Possession.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid and lost rent for December, 2014?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of Landlord's monetary claim?

Background and Evidence

The Landlord's agent testified that this tenancy started on November 1, 2010 for a fixed term of one year after which the tenancy continued on a month to month basis. The rent payable at the start of the tenancy was \$499.00 and at the end of the tenancy it was payable in the amount of \$520.00 per month. The Landlord testified that the rent was payable on the first day of each month.

The Tenant paid a \$249.50 security deposit on October 1, 2010 which the Landlord still retains. I note that there is no interest payable on the security deposit.

The Landlord's agent testified that the Tenant provided the Landlord with a written letter which was not dated, but explained that the Tenant would be vacating the rental suite on November 31, 2014.

The Landlord testified that he had received this written notice on October 24, 2014 and while they had tried to work with the Tenant to continue the tenancy or mutually agree to end the tenancy, they accepted that the Tenant would be moving out on the date detailed in the written letter.

The Landlord's agent testified that they quickly mitigated their loss and found a new renter to move into the rental suite for December 1, 2014. However, the Tenant failed to vacate the rental unit in accordance with her written notice to end the tenancy and the new renter is unable to move into the rental suite until January 1, 2014.

As the Tenant failed to vacate the rental suite on November 31, 2014, did not pay rent for December, 2014, moved out in the middle of December, 2014, and the Landlord lost

potential rent from the new renter, the Landlord now seeks to recover the lost rent for December, 2014 in the amount of **\$520.00**.

Analysis

Section 45 (1) of the Act states that a Tenant may end a periodic tenancy by giving the Landlord notice to end the tenancy effective on a date that:

- (a) is not earlier than one month after the date the Landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Based on the Landlord's undisputed testimony and written evidence, I find that the Tenant provided the Landlord with written notice on October 24, 2014 to end the tenancy on November 31, 2014 in accordance with the Act.

I accept the Landlord's agent's oral testimony that he mitigated his loss as required by the Act, and secured a new renter for the period of December, 2014 onwards. Therefore, the Tenant would have been required to vacate the rental unit in accordance with her written notice on November 31, 2014, but failed to do so, thereby compromising the tenancy of the new renter.

I accept the Landlord's agent's evidence that the Tenant failed to pay rent for time that the Tenant was over holding the tenancy for a time period of December, 2014.

The Tenant is therefore liable for the Landlord's loss of rental income for the entire month of December, 2014 as the new renter could only move in on January 1, 2014. Therefore, the Tenant owes the Landlord **\$520.00** in rental arrears.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the **\$50.00** filing fee for the cost of this Application, pursuant to Section 72(1) of the Act.

Therefore, the total amount payable by the Tenant to the Landlord is **\$570.00**. As the Landlord already holds the Tenant's **\$249.50** security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 38(4) (b) of the Act.

As a result, the Landlord is awarded a total amount of **\$320.50** in rental arrears.

Conclusion

For the above reasons, I grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$320.50**. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The Landlord's Application for an Order of Possession is dismissed

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 22, 2014

Residential Tenancy Branch

