



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 OPC/OPE, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for:

- an Order of Possession for end of employment pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties (two landlords and both tenants) attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. Before the conclusion of this hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Background and Evidence

Both parties gave evidence that the tenancy agreement for the premises began in November 1, 2009. This month to month tenancy had a rental amount of \$525.00 payable on the first of each month. Tenant DP testified that the rental amounts for similar rental units within the building where he and his wife reside are approximately \$800.00 to \$850.00 per month. The property manager ("the landlord") testified that the landlord continued to hold the \$410.00 security deposit that the tenants paid on October 29, 2009. This information is reflected in the tenancy agreement submitted by both parties. Both parties testified that the tenant and his wife are still residing in the rental unit. Both parties testified that the tenant and his wife are no longer employed by the landlord and that their rental unit is required for a new caretaker. The landlord testified that the tenants' rental unit was provided at a reduced rate as part of their employment agreement and that the rental unit will be used for the new caretaker's residence and office.

The landlord testified that he personally served both tenants with the the 1 Month Notice to End Tenancy for End of Employment ("1 Month Notice") on February 25, 2015 by handing it to them at their rental unit. The landlord testified, describing in detail the conditions of his interaction with the tenant on this date. The tenant denied receiving the notice on this date. The landlord provided, as part of his documentary evidence, a proof of service document with a witness signature confirming the service on this date. The witness was made available to testify. The landlord's witness provided sworn testimony indicating that the tenant had confirmed receipt of the 1 Month Notice to him. I accept the sworn, detailed testimony of both landlords, supported by the documentary evidence provided. In accordance with section 88 of the *Act*, I find that the tenants were both duly served with the 1 Month Notice on February 25, 2015.

The landlord testified that he served the tenants with two separate Application for Dispute Resolution packages by registered mail on March 20, 2015. The tenants confirmed receipt of these packages. The landlord provided registered mail receipts and tracking information as further evidence. In accordance with section 89 of the *Act*, I find that the tenants were deemed served with the landlord's dispute resolution package on March 25, 2015, 5 days after mailing.

The landlord confirmed receipt of the tenants' evidence package on April 1, 2015. In accordance with section 88 of the *Act*, I find that the landlord was duly served with the tenants' evidence package.

Analysis

During the hearing, the relevant legislation was reviewed briefly. Section 48 of the *Act* provides that a landlord may end the tenancy of a person employed as a caretaker of the residential property of which the rental unit is part by giving notice to end tenancy if the following conditions are met;

- (a) the rental unit was rented or provided to the tenant for the term of his or her employment,
- (b) the tenant's employment as a caretaker, manager or superintendent is ended, and
- (c) the landlord intends in good faith to rent or provide the rental unit to a new caretaker, manager or superintendent.

Section 48 (6) of the *Act* states that,

If a tenant who has received a notice under this section does not make an application for dispute resolution ..., the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Both parties agreed on an end to this tenancy. The landlords agreed to provide the equivalent of one months' rent and the tenants' entire security deposit when the tenants vacate the rental unit. There is no interest payable on this deposit. The landlords agreed to pay the tenants as follows;

Item	Amount
Equivalent of 1 Month's Rent	\$525.00
Return of Security Deposit	410.00
Total Monetary Award	\$935.00

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. Given the agreement reached between the parties during the proceedings, I find that the parties have settled their dispute and the following records this settlement as a decision:

The Parties mutually agreed as follows:

- 1) Both parties agreed that this tenancy will end by 1:00 p.m. on May 15, 2015, by which time the tenants agreed to have vacated the rental unit.
- 2) The landlord agreed to pay the tenants \$935.00 on May 15, 2015 by 4:00 p.m.
- 3) These terms comprise the full and final settlement of all aspects of this dispute for both parties, including the return of the tenants' security deposit as part of the \$935.00 monetary settlement identified above.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenants do not comply with the monetary terms of their agreement **and** fail to vacate the rental premises by May 15, 2015, in accordance with their agreement. The landlord is

provided with these Orders in the above terms and the tenant(s) must be served with this Order in the event that the tenants do not vacate the premises in accordance with their agreement. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

To give effect to the settlement reached between these parties, I issue a monetary order in favor of the tenant in the amount of \$935.00, to be used only if the landlord fails to comply with the payment arrangement provided above by June 1, 2015. The tenant is provided with these Orders in the above terms and the landlord(s) must be served with this Order as soon as possible after any failure to abide by the monetary terms of their settlement agreement. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: April 17, 2015

Residential Tenancy Branch

