



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, FFL

Introduction

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

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that the tenant was personally served with the notice of dispute resolution package on August 3, 2018. The tenant testified that he received the notice of dispute resolution package in person on August 3, 2018. I find that the tenant was served with this package in accordance with section 89 of the *Act*.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled a Monetary Order for unpaid rent pursuant to sections 26 and 67 of the *Act*?
3. Is the landlord entitled recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 1, 2017 and is currently ongoing. Monthly rent in the amount of \$1,020.00 is payable on the first day of each month. A security deposit of \$492.50 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on July 4, 2018 a 10 Day Notice to End Tenancy for unpaid rent with an effective date of July 14, 2018 (the "10 Day Notice") was posted on the tenant's door. The 10 Day Notice states that the tenant did not pay rent in the amount of \$1,020.00 on July 1, 2018 when it was due. The tenant confirmed receipt of the 10 Day Notice on or around July 4, 2018.

Both parties agreed to the following facts. The tenant did not pay July 2018's rent until August 24, 2018 at which time the tenant provided the landlord with two cheques totaling \$1,500.00. At this time the tenant was issued a receipt for "use and occupancy only". The tenant has not paid any further rent money and the following amounts are owed by the tenant to the landlord:

- August 2018 rent: \$540.00
- September 2018 rent: \$1,020.00

The tenant testified that he gave the landlord a rent cheque in the amount of \$900.00 on July 10, 2018 and that this cheque bounced due to someone stealing money out of his bank account. The tenant did not enter any documentation into evidence. The tenant testified that he tried to give the landlord \$600.00 in cash for the remainder of July's rent sometime at the end of July. The landlord denied that this occurred and testified that any money from the tenant would have been accepted and a receipt for "use and occupancy only" would have been provided.

The tenant testified that he did not file an application with the Residential Tenancy Branch to dispute the 10 Day Notice.

Analysis

Section 88 of the *Act* states that a 10 Day Notice may be served on the tenant by posting a copy of the 10 Day Notice to the tenant's door. Based on the testimony of both parties, I find that service of the 10 Day Notice was effected on the tenant on July 4, 2018, in accordance with section 88 of the *Act*.

The tenant failed to pay the July 2018 rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice.

In this case, this required the tenant to vacate the premises by July 14, 2018, as that has not occurred, I find that the landlord is entitled to a 2-day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. I find that the tenant was obligated to pay the monthly rent in the amount of \$1,020.00 on the first day of each month from July to September 2018 which he failed to do. Pursuant to section 67 of the *Act*, I find that the tenant owes the landlord \$1,560.00 in unpaid rent.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$492.50 in part satisfaction of the monetary claim for unpaid rent against the tenant.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
August rent outstanding	\$540.00
September rent outstanding	\$1,020.00
Filing Fee	\$100.00
Less security deposit	-\$492.50
TOTAL	\$1,167.50

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 21, 2018

Residential Tenancy Branch