



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 OPRM-DR, FFL

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") to obtain an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 1, 2018 ("10 Day Notice"), for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee.

This matter was originally applied for as a Direct Request Proceeding and was adjourned to a participatory hearing based on an Interim Decision that was issued dated November 28, 2018, which should be read in conjunction with this decision.

On January 17, 2019, an agent for the landlord RS ("agent") and the tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The tenant's evidence was excluded from the hearing as it was not served at the service address listed on the landlord's application and the agent testified that the landlord did not receive the tenant's documentary evidence. The tenant confirmed that he was served with the landlord's documentary evidence and had the opportunity to review that evidence prior to the hearing. The tenant did not have that evidence before him during the hearing; however, so the relevant evidence was described to the tenant during the hearing.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?

- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy agreement indicates that the tenancy began on July 1, 2011 and that the monthly rent was \$765.00. A parking space or spaces are not included in the monthly rent. The agent also provided a copy of all six Notice of Rent Increase forms from 2013 to 2018 inclusive which supports that the monthly rent was increased as follows:

From \$765.00 to \$775.00 effective February 1, 2013

From \$775.00 to \$790.00 effective July 1, 2014

From \$790.00 to \$810.00 effective January 1, 2016

From \$810.00 to \$840.00 effective January 1, 2017

From \$840.00 to \$870.00 effective January 1, 2018

From \$870.00 to \$890.00 effective January 1, 2019

A copy of the 10 Day Notice dated November 1, 2018 was submitted in evidence. The 10 Day Notice indicates that \$135.00 was owing as of November 11, 2018, which the agent clarified was for August 1, 2018 rent and was comprised of \$110.00 in rent arrears, plus the \$25.00 late fee as per clause 2 of the addendum to the tenancy agreement, which confirms that a fee of \$25.00 will be added to all late payments of rent.

The tenant admitted that he did not pay \$110.00 of the August 2018 rent as he lost his parking fob and felt that he should not be paying for parking as a result. The agent stated that the monthly rent does not include parking and that the statement does not make sense from the tenant. The tenant confirmed that he signed the tenancy agreement which indicates that parking is not included in the monthly rent and that he did not notice that before.

The agent confirmed that the tenant has paid for use and occupancy of the rental unit for January 2019. The tenant has not disputed the 10 Day Notice and although he confirmed he originally received the 10 Day Notice in August, later testified that he received it in October, yet the 10 Day Notice is dated November 1, 2018. The effective vacancy date listed on the 10 Day Notice was November 10, 2018.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of possession – Firstly, I find the tenant's testimony to be inconsistent and changed during the hearing. Therefore, I prefer the testimony of the agent which was consistent and did not change during the hearing. I find that the tenant failed to pay the full amount of rent owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. The effective vacancy date of the Notice was November 10, 2018. I find the parking issue is moot as the monthly rent does not include parking and that the full amount of rent should have been paid in accordance with the tenancy agreement.

The tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice. The tenant continues to occupy the rental unit. Therefore, I grant the landlord an order of possession effective **January 31, 2019 at 1:00 p.m.** as the landlord has received money from the tenant for use and occupancy of the rental unit for January 2019.

Claim for unpaid rent – I accept that the tenant owes \$110.00 for unpaid rent for August 2018 plus a late fee of \$25.00 as per the tenancy agreement addendum. 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 that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the landlord has met the burden of proof and has established a monetary claim of **\$135.00** comprised of unpaid rent and a late fee for August 2018.

As the landlord has succeeded with their application, I grant the landlord the recovery of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

Pursuant to section 67 and 72 of the *Act*, I find the landlord has established a total monetary claim of **\$235.00** comprised of \$135.00 owing for unpaid August 2018 rent, a \$25.00 late fee plus the recovery of the cost of the \$100.00 filing fee.

The agent did not want to offset the monetary claim from the tenant's security deposit.

Conclusion

The landlord's application is fully successful.

The landlord has been granted an order of possession effective January 31, 2018 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has established a total monetary claim of \$235.00 as indicated above and has been granted a monetary order in that amount accordingly pursuant to section 67 and 72 of the *Act*. This order must be served on the tenants 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: January 17, 2019

Residential Tenancy Branch