



Dispute Resolution Services

Page: 1

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 FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on June 6, 2022. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

1. an order of possession based off a 10 Day Notice to End Tenancy for unpaid rent or utilities (the Notice);
2. a monetary order for unpaid rent or utilities;
3. to recover the filing fee from the tenant for the cost of this application.

The Landlords attended the hearing and provided affirmed testimony. The Tenants did not attend the hearing. The Landlord testified that they sent the Tenant each a copy of the Notice of Dispute Resolution Proceeding and evidence, by registered mail on April 28, 2022. Mail tracking was provided into evidence. Pursuant to section 89 and 90 of the Act, I find the Tenants are deemed to have received these packages 5 days after they were sent.

The landlords were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

This hearing was set to hear two of the Landlord's applications, each for a different Notice. The Landlords requested to withdraw their first application, as the first Notice contained errors. I hereby allow the Landlord's to withdraw the first application, and proceed with the second application, outlined below (the second Notice).

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

Background and Evidence

The Landlords testified that monthly rent is \$1,471.00, and is due on the first of the month. The Landlords hold a security deposit of \$725.00 and a pet deposit of \$725.00.

The Landlord testified that they served the Notice by posting it to the door of the rental unit on April 2, 2022. Proof of service was provided into evidence. The amount owing at that time was \$84.00. The Landlords explained that they lawfully increased rent from \$1,450.00 to \$1,471.00 as of January 1, 2022. The Landlords stated that the Tenants continued to pay the lesser amount of \$1,450.00 each month, and each month their rent owed increases and accrues by an additional \$21.00.

At the time of this hearing, the Tenants owe \$126.00 in unpaid rent, for January – June 2022.

Analysis

Based on the affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days, under section 46(4) of the *Act*, after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the tenants owed \$84.00 in past due rent at the time the Notice was issued on April 2, 2022. The landlords issued the Notice by posting it to the door of the rental unit on April 2, 2022, and I find the tenants are deemed to have received Notice on April 5, 2022, 3 days after it was posted, pursuant to section 90 of the *Act*.

The tenants had 5 days to pay rent in full or file an application for dispute resolution. There is no evidence that the Tenants did either. As such, I find the tenants are conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenants.

Next, I turn to the Landlord's request for a Monetary Order for unpaid rent. After considering the evidence before me, as summarized in the chart above, I find there is sufficient evidence before me to demonstrate that the tenants owes and have failed to pay \$126.00 in past due rent as of the time of this hearing.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was successful in this hearing, I also order the tenants to repay the \$100.00 fee the Landlord paid to make the application for dispute resolution. In summary, I find the Landlord is entitled to a monetary order in the amount of \$226.00. The Landlords may deduct this amount from the security and pet deposit, which leaves \$1,224.00 in security and pet deposits. The remaining amounts must be dealt with in accordance with the *Act*.

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenants. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: June 06, 2022

Residential Tenancy Branch