



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]

Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

Introduction:

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss; to retain all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Agent for the Landlord stated that the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord wishes to rely upon as evidence were sent to the Tenant at the rental unit, via registered mail, on August 23, 2013. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

Issue(s) to be Decided:

Is the Landlord entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent and a late fee; and to keep all or part of the security deposit?

Background and Evidence:

The Agent for the Landlord stated that this tenancy began on September 15, 2010; that the Tenant is currently required to pay monthly rent of \$635.00 by the first day of each month; and that the Tenant paid a security deposit of \$312.50. The Landlord submitted a tenancy agreement that corroborates this testimony and which indicates the Tenant agreed to pay a fee of \$25.00 whenever she is late paying rent.

The Agent for the Landlord stated that the Tenant did not pay any rent for August until August 11, 2013, at which time she paid \$500.00, for which she was given a receipt for "use and occupancy only".

The Agent for the Landlord stated that the Tenant paid another \$540.00 on August 26, 2013, at which time she was given a receipt for "use and occupancy only". \$135.00 of

this payment was applied to the outstanding rent for August and the remaining \$405.00 was applied to rent for September of 2013.

The Agent for the Landlord stated that the Tenant did not pay any further rent for September of 2013 and that she is still occupying the rental unit.

The Agent for the Landlord stated that he was present on August 02, 2013 when another agent for the Landlord posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of August 15, 2013, on the door of the rental unit.

Analysis

Based on the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$635.00 by August 01, 2013; that rent was not paid when it was due; that a portion of the overdue rent was paid on August 11, 2013; and that the remainder of the rent for August was paid on August 26, 2013.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. Based on the undisputed evidence, I find that the a Ten Day Notice to End Tenancy for Unpaid Rent, which directed the Tenant to vacate the rental unit by August 15, 2013, was posted on the door on August 02, 2013.

Section 46 of the *Act* stipulates that a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice to End Tenancy if the tenant does not either pay the outstanding rent or file an Application for Dispute Resolution to dispute the Notice within five days of receiving the Notice to End Tenancy. In the circumstances before me I have no evidence to show that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I find that the Landlord is entitled to an Order of Possession.

As the Tenant occupied the rental unit for the entire month of September of 2013, I find that she must pay rent for that month. As she has already paid \$405.00 in rent for September, I find that she must pay the Landlord an additional \$230.00 in rent.

As the Tenant did not pay her rent when it was due on August 01, 2013 and the tenancy agreement requires the Tenant to pay a fee of \$25.00 whenever rent is not paid when it is due, I find that the Landlord is entitled to a late fee of \$25.00 for the month of August of 2013.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$305.00, which is comprised of \$230.00 in unpaid rent, a late fee of \$25.00, and \$50.00 in compensation for the fee paid to file this Application for Dispute Resolution. I authorize the Landlord to retain this amount from the security deposit.

The Landlord must return the remaining \$7.50 of the security deposit to the Tenant and I grant the Tenant a monetary Order for this amount. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims 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: October 01, 2013

Residential Tenancy Branch

