



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capilano Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

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 section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to discuss this application with one another.

The landlord confirmed that he had erred in misidentifying the female tenant as the name stated above (i.e., Tenant MAM). The female who attended this hearing confirmed that she and male tenant were the co-tenants in this tenancy. However, as the female Respondent's name was in such error, combining portions of the female tenant's name with the name of the landlord's female representative, I was unwilling to consider an amendment of the landlord's application to include the female tenant in this application as a Respondent in the landlord's application. The female tenant who attended the hearing confirmed that she was empowered to act as the male tenant's agent in this matter. I allowed her to proceed to act as the male tenant's agent in this matter. I allowed her to speak to issues jointly affecting them with respect to the landlord's application.

The female tenant confirmed that she and the male tenant received the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on their door on January 2, 2014. The female tenant confirmed that both she and the male tenant

received copies of the landlord's dispute resolution hearing package properly addressed to them by the landlord on January 24, 2014 by registered mail. I am satisfied that the tenants received the 10 Day Notice and that the male tenant received the landlord's dispute resolution hearing package identifying him as a Respondent in accordance with the Act.

At the hearing, the landlord confirmed that the tenants have paid all outstanding rent owing from January, February and March 2014 for this rental unit. He reduced the amount of his requested monetary award from \$1,917.00, the amount shown as owing in his application for dispute resolution, to \$225.00, for \$25.00 late fees for 9 months of this tenancy.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the male tenant?

Background and Evidence

This tenancy began as a one-year fixed term tenancy on May 15, 2010. When the initial term expired, the tenancy continued as a periodic tenancy. Monthly rent was originally set at \$699.00, payable in advance on the first of each month, plus hydro. The female tenant testified that the rent increased to \$719.00 on or about November 2012, after the tenants received the landlord's notice of a rent increase. The landlord continues to hold the tenants' \$349.50 security deposit and \$349.50 pet damage deposit, both paid on May 15, 2010.

The landlord did not dispute the female tenant's sworn testimony that she paid \$529.00, the amount of rent owing from January 2014 in the last week of January 2014, paid the February 2014 rent about a week late, and paid the March 2014 rent on time. The landlord gave undisputed sworn testimony that he issued receipts to the tenants for the above payments for use and occupancy only.

Analysis

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. During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to resolve all issues currently under dispute arising out of this tenancy and outlined in the landlord's application for dispute resolution under the following final and binding terms:

1. The tenants agreed to pay a total of \$225.00 in late fees arising out of this tenancy to the landlord.
2. The tenants agreed to comply with the above agreement by paying \$50.00 to the landlord by March 31, 2014.
3. The tenants agreed to comply with the remainder of the above-noted agreement by paying the remainder of the \$225.00 owed to the landlord in \$25.00 installments with each month's rent cheque.
4. The landlord agreed to withdraw the 10 Day Notice.
5. The landlord agreed that the monetary terms of this settlement agreement constituted a final and binding resolution of the landlord's application for dispute resolution and all issues currently under dispute arising out of this tenancy.

Conclusion

The landlord's 10 Day Notice is set aside. This tenancy continues.

In order to implement the above settlement reached between the parties, I issue a monetary Order in the landlord's favour in the amount of \$225.00. I deliver this Order to the landlord in support of the above agreement for use **only** in the event that the male tenant, Tenant JK, does not abide by the terms of the above settlement. The landlord is provided with these Orders in the above terms and the male tenant must be served with a copy of these Orders as soon as possible after a failure to comply with the terms of the above settlement agreement. Should the male tenant 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: March 10, 2014

Residential Tenancy Branch

