



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

Dispute Codes: OPR, MNR, CNR, FF, O

## Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and utilities as well as to recover the filing fee for this proceeding. The Tenants applied to cancel a Notice to End Tenancy for Unpaid Rent and Utilities and to recover the filing fee for this proceeding.

At the outset of the hearing, the Tenants sought to amend their application to include a monetary claim for compensation for damage or loss under the Act or tenancy agreement. I denied the application pursuant to Rule 2.3 on the grounds that the proposed amendment was filed only 3 days prior to the hearing and is unrelated to the original relief sought in this matter. Consequently, the Tenants are at liberty to re-apply for that relief.

## Issue(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Are there arrears of rent and utilities and if so, how much?

## Background and Evidence

This fixed term tenancy started on May 1, 2008 and was to expire on April 30, 2009. Rent is \$3,000.00 per month payable on the 1<sup>st</sup> day of each month. The Landlord says the Tenants are also responsible for the quarterly municipal utility bills (ie. water, sewer and garbage) for the rental property under the tenancy agreement whereas the Tenants claim they are not responsible for this bill.

The Landlord says the Tenants are in arrears of rent of \$1,500.00 for December, 2008 and have not paid rent for January, 2009. The Landlord said he served the Tenants in person on January 2, 2009 with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated January 2, 2009. The Notice indicates that rent arrears of \$3,800.00 are owing in addition to \$520.76 for municipal utilities for November, December 2008 and

January, 2009. The Landlord claimed that the Tenants had not paid any of the quarterly utility bills during the tenancy and he wished to recover those amounts as well. The Landlord claimed he also issued a 10 Day Notice for Unpaid Rent and Utilities dated December 2, 2008 which shows \$1,500.00 was not paid for rent and \$1,039.00 was outstanding for utilities. The Landlord initially said that \$800.00 of the \$3,800.00 alleged to be in arrears on the January 2, 2009 Notice related to December rent arrears. He then said that the \$800.00 probably was for utilities but was inadvertently added to rent. I note that on a Demand for Payment dated January 7, 2009 by the Landlord, the \$800.00 is identified as late fees. The Landlord said in any event, he always issued receipts for payments made in cash and that the Tenants could not produce a receipt.

The Landlord also sought late payment fees of \$100.00 per day for 45 days based on a term in the Parties' tenancy agreement to that effect. The Landlord also relied on an acceleration clause in the tenancy agreement that said if the Tenants breached the tenancy agreement, the Landlord became immediately entitled to rent for the unexpired term of the lease. Consequently, the Landlord sought a further \$9,000.00 for this part of his claim.

The Tenants claim they withheld January, 2009 rent because they believed the rental property was in foreclosure and that they would not get their security deposit and pet damage deposit returned. The Landlords denied the property was in foreclosure but admitted the mortgagee was becoming upset because the Tenants' rent payments used to pay the mortgage account were continually being returned or held. Additionally the Tenants claimed that they made repairs for which the Landlord has refused to reimburse them.

In support of their position that there are no rent arrears for December, 2008, the Tenants claim the Notice to End Tenancy dated January 2, 2009 does not include an amount for December, 2008 rent. The Tenants claimed that their former room mate gave the Landlord a cheque for \$1,500.00 on December 1, 2008. The Tenant said he paid the Landlord a further \$1,500.00 in cash but that the Landlord did not give him a receipt for it. The Tenants rely on a letter to them from the Landlord dated December 11, 2008 complaining about a hold placed on their room mate's cheque, but says nothing about any other outstanding rent arrears for December, 2008.

The Tenants also claimed that according to their copy of the tenancy agreement, water and garbage collection is included in the rent. The Tenants did not provide their copy of the tenancy agreement as evidence at the hearing. The Landlord provided a copy of a tenancy agreement that stated water was not included in the rent but that garbage collection was included in the rent. Sewer charges are not addressed in the tenancy agreement. The Landlord claimed he and the Tenants had an understanding in any event that they were responsible for the municipal quarterly utility billings as indicated by his letters to them dated November 30, 2008 and January 3 and 7, 2009.

## Analysis

The Parties agree that rent has not been paid for January, 2009 in the amount of \$3,000.00 but deny that they owe \$1,500.00 for rent for December, 2008 or for the quarterly billed municipal utilities. There is no evidence that the rental property is in Foreclosure and the Tenants admitted that they could not be sure. The Tenants also admitted that they did not have an order of the director permitting them to withhold rent for January, 2009. Consequently, I find that the Landlord is entitled to unpaid rent for January, 2009 in the amount of **\$3,000.00**.

I find that there is insufficient evidence that rent is outstanding for December, 2008 as alleged. In particular, I note that the Landlord's letter of December 11, 2008 (which was issued after the Notice to End Tenancy dated December 2, 2008 was given) does not refer to any other rent arrears nor does the Notice to End Tenancy dated January 2, 2009.

I find that the Tenants are responsible for paying only the water portion of the quarterly municipal utility bills. The tenancy agreement specifically states that garbage collection is included in rent. The tenancy agreement does not address sewer charges. Section 6(3)(c) of the Act says that a term of a tenancy agreement is not enforceable if it is not expressed in a manner that clearly communicates the rights and obligations under it. Consequently, in the absence of a term specifically requiring the Tenants to pay sewer charges, I find there is no evidence of an agreement to that effect and they are not obligated to pay it.

I do not accept the Tenants' argument that water was included in rent according to his copy of the tenancy agreement. The Tenant provided a written submission in which he states, "The [Landlord's] letter also states unpaid utilities, ***tenant was only responsible for the water bill, not sewer, not garbage removal, the water bill owing is \$362.00, this remains unpaid, again this is the only way of collecting on reimbursements owed by landlord.***" The Landlord provided copies of two utility bills for the period April 1, 2008 to September, 2008 that total \$213.59 for water. Given what I find is an admission by the Tenants that they owe **\$362.00** for unpaid utilities to the end of the 4<sup>th</sup> quarterly billing period to the end of December, 2008, I find that the Landlord is entitled to recover that amount.

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the amount set out on the Notice or apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit at that time. Although the Tenants applied to set aside the Notice on January 5, 2009, I

find that they have no grounds to dispute the notice because there are arrears of rent and utilities that remain unpaid.

The Landlord requested and I find he is entitled to an Order of Possession to take effect at 1:00 p.m. PST on January 30, 2009. I also find that the Landlord is entitled to recover rent arrears in the amount of \$3,000.00 and utility arrears of \$362.00. As the Landlord has only been partially successful in this matter, I find that he is entitled to recover ½ of his filing fee for this proceeding or \$50.00.

The Landlord's application to recover late fees is dismissed as Section 7 of the Regulations to the Act permit a Landlord to recover a maximum of \$25.00 for a late fee provided that term is contained in a written tenancy agreement. The Landlord's application for a loss of rental income for the unexpired term of the lease is premature and as a result, it is dismissed with leave to reapply.

### Conclusion

The Tenants' application is dismissed. An Order of Possession effective January 30, 2009 and a Monetary Order in the amount of **\$3,412.00** has been issued to the Landlord and a copy of the Orders must be served on the Tenants. The Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.