



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes

OPR, MNR, MNDC, MNSS, & FF

Introduction

This hearing dealt with an application by the landlord seeking an Order of Possession and a monetary claim related to non-payment of rent and utilities by the tenant. Although the tenant was served with notice of this application and hearing by registered mail on March 1, 2009, she did not appear. Pursuant to section 90(a) of the *Act* I deem the tenant as having been served in accordance with section 89 of the *Act*. Therefore, I proceeded with the hearing in the tenant's absence.

Issues to be Determined

Is the landlord entitled to an Order of Possession due to non-payment of rent or utilities? Is the landlord entitled to a monetary claim for unpaid rent and utilities? Is the landlord entitled to retain the tenant's security deposit plus interest?

Background and Evidence

This tenancy began March 1, 2008 with a security deposit of \$385.00 and the current monthly rent of \$798.49. On February 6, 2009 the landlord served the tenant with a 10 day Notice to End Tenancy due to non-payment of rent and utilities. According to the notice the tenant owed an outstanding amount of \$25.00 and outstanding utilities of \$351.10.

Since receiving the notice in February the tenant has made two payments. One was for the sum of \$795.00 on March 4, 2009 and recently \$600.00 on April 22, 2009. The tenant failed to pay the outstanding amount owed within five days of receiving the notice and failed to dispute the notice. The landlord issued the tenant receipts indicating that all money accepted were for "use and occupancy" only.

The landlord indicated that the tenant failed to pay her utilities and they have been invoiced directly by BC Hydro for payment. The landlord states that the tenant was provided with a demand letter to pay the outstanding utilities on January 1, 2009. The landlord did not provide a copy of the demand letter or any evidence corroborating the sum owed for utilities.

The landlord seeks an Order of Possession and a monetary claim due to the tenant's failure to comply with the tenancy agreement and *Act*.

Analysis

I dismiss, with leave, the landlord's application requesting a monetary claim related to non-payment of utilities. The landlord has not provided any evidence, besides an in house account statement, to corroborate the allegation that the utilities owed by the tenant to BC Hydro have been charged to the landlord. The landlord confirmed in the hearing that the utility is in the tenant's name.

I find that the tenant failed to pay the rent owed within five days of receiving the 10 day Notice to End Tenancy and also failed to file an application to dispute the notice within five days after receiving the notice. Subsequently, the tenant failed to pay the full rent owed for March 2009 and all of the rent owed for April 2009. By failing to exercise either of her rights after being served with the 10 day Notice to End Tenancy I find that the tenant has conclusively accepted the end of the tenancy pursuant to section 46(5) of the *Act*. On this basis I grant the landlord's request for an Order of Possession effective **April 30, 2009 at 1:00 p.m.** This Order may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a total monetary claim for the sum of \$876.98 comprised of outstanding rent owed for February, March and April 2009 for \$ plus the recovery of the \$50.00 filing fee paid by the landlord for this application less the \$600.00 paid by the tenant on April 22, 2009. I Order that the landlord may deduct this sum from the tenant's security deposit plus interest of \$389.83. The remaining portion of the tenant's security deposit plus interest should be returned to the tenant.

Conclusion

The landlord's application is granted in part. The landlord has received an Order of Possession and a monetary Order due to non-payment of rent by the tenant. The landlord request for a monetary claim related to non-payment of utilities is dismissed with leave to re-apply.

Dated April 23, 2009.

Dispute Resolution Officer