



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession, a Monetary Order to recover unpaid rent and utilities, an Order to keep all or part of the security deposit and a Monetary Order to recover the filing fee.

Both parties were given the opportunity to appear. However, only the landlord and the landlords' agent appeared. Both parties were provided the opportunity to present their evidence orally, in written form, documentary form and make submissions to me. The Landlord served the Tenant by hand on April 09, 2009 with a copy of the Application and Notice of Hearing. I find that the Tenant was properly served pursuant to s. 89 of the Act with notice of this hearing and the hearing proceeded in the Tenants absence.

Issues(s) to be Decided

- Whether the Landlord is entitled to an Order of Possession
- Are there arrears of rent and utilities and if so, how much?
- Is the landlord entitled to keep the security deposit?
- Whether the landlord is entitled to a Monetary Order to recover the filing fee

Background and Evidence

This tenancy began on September 01, 2007. The rent was agreed at \$500.00 per month payable on the 1st of each month. The tenants paid a security deposit of \$250.00 on September 01, 2007. The landlord has provided evidence in the tenancy agreement detailing the amount the tenants agreed to pay for hot water each month. This was set as \$15.00 for the months of April to September and \$30.00 for the months of October to March.

The tenants had an underpayment of rent and utilities for May 2008 of \$140.00. They did not pay rent or utilities for, August, September, October, and November, 2008 of \$2,090.00 and December utilities of \$30.00. The landlords issued the tenants with a 10 Day Notice in December, 2008. However, the tenants paid their rent for December and the Notice was not upheld. The tenants did not pay rent or utilities for January, February and March, 2009 of \$1,590.00. The landlord issued the tenants with another 10 Day Notice to end the tenancy for unpaid rent and utilities on March 28, 2009. Since that Notice was issued the tenants have not paid rent or utilities for April and May, 2009 of \$1,030.00.

The landlord has requested an Order of Possession and a Monetary Order for the unpaid rent and utilities. The landlord has asked to retain the tenants' security deposit in partial payment of the outstanding rent and utilities and to recover the filing fee for this application.

Analysis

I find that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the

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tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the rent nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenants are conclusively presumed, under section 46(5) of the Act, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession.

In the absence of any evidence from the tenants, I find that the landlord is entitled to recover rent arrears of \$4,625.00 and unpaid utilities of \$255.00. As the landlord has been successful in this matter, he is also entitled to recover his \$50.00 filing fee for this proceeding.

I order the landlord pursuant to s. 38(4) of the *Act* to keep the tenant's security deposit in partial payment of the rent arrears. The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent and utilities	\$4,880.00
Less security deposit and accrued interest	-255.02
total	\$4,674.98

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Conclusion



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An order of Possession has been issued to the landlord. A copy of the Orders must be served on the tenant and the tenant must vacate the rental unit **two days** after service. The Order of Possession may be enforced in the Supreme Court of British Columbia.

A Monetary order in the amount of **\$4,674.98** has been issued to the landlord and a copy of it must be served on the tenant. If the amount of the order is not paid by the tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: May 05, 2009.

Dispute Resolution Officer