

DECISION AND REASONS

Dispute Codes:

OP, MNR, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of possession, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were personally served to the tenant, by the landlord, at the rental unit, on April via registered mail at the address noted on the Application, on April 2, 2009. These documents are deemed to have been served in accordance with section 89 of the *Act*, however the tenant did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of possession, a monetary Order for unpaid rent and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

This tenancy commenced three years ago and rent was \$800.00 per month. Due to renovations the landlord was completing, the rent was reduced in May 2008 to \$700.00 per month.

On April 4, 2009 the landlord issued the tenant a "notice to comply or vacate" in which he told the tenant that he owed rent for March and April, 2009 and gas bills accrued during 2009. This notice does not indicate that the tenant has been provided with a copy of the gas bill or the amount owed for gas. The landlord then issued a typed "Eviction Notice" on April 25, 2009 which indicated that the tenancy was being terminated due to non-payment of rent and utilities.

The landlord testified that the tenant remains in the rental unit. The landlord stated that the tenant paid \$600.00 rent in March and that on May 2nd or 3rd the tenant paid \$700.00, of which \$100.00 was applied to April rent. The landlord testified that he tenant has not paid May or June rent of \$700.00 per month.

The landlord is claiming unpaid rent of \$1,500.00 owed from April, May and June, 2009. The landlord submitted a Teresan Gas Notice of Disconnection dated April 14, 2009, referencing the rental unit address, indicating that the service will be disconnected. The landlord stated that the tenant is responsible for payment of the

gas bill.

The landlord testified that there was a written tenancy agreement for the first twelve months of the tenancy. A tenancy agreement was not supplied as evidence.

Analysis

I find that the “Notice to Comply and Vacate” and “Eviction Notice” issued by the landlord are not in the required form and fail to include the content required under section 52 of the Act. As these Notices do meet the requirements of the Act they are no force or effect. Therefore, the landlord’s request for an Order of possession based upon these documents is dismissed without leave to reapply.

Based upon the evidence before me and the testimony provided by the landlord and in the absence of the tenant who is deemed to have been served with notice of this hearing, I find that the landlord is owed unpaid rent of \$100.00 for April and \$700.00 for the months of May and June, 2009 each and is entitled to compensation for these amounts. I find that the documents issued by the landlord to the tenant provided the tenant with adequate notice that the unpaid rent was due to the landlord. Further, I have deemed that the tenant was served with notice of this hearing, which provided the tenant with a copy of the application for dispute resolution and evidence that outlined that claim against the tenant. I accept that the landlord has established a monetary claim for the sum of \$1,550.00.

The landlord is at liberty to issue a Notice to End Tenancy on an approved form which includes the required content and to make further application for dispute resolution for an Order of possession. .

I find that the landlord has not provided adequate evidence that the tenant has been served with notice of the gas utility bill. The landlord has not provided evidence of a written agreement requiring the tenant to pay utilities and I dismiss without leave to reapply the landlord’s claim for gas bills to April 14, 2009.

I grant the landlord’s application in part, and I find that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord has not applied to retain any deposit that may have been paid by the tenant. Any deposit paid is held in trust by the landlord and must be disbursed as determined by section 38 of the Act.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$1,550.00, which is comprised of \$1,500.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order for **\$1,550.00**. In the event that the tenant does not comply with this Order, it may be served on the

tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated June 04, 2009.

Dispute Resolution Officer