



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, CNR, MNDC, OLC, FF

Introduction

This hearing was convened on the joint applications of the tenant and the landlord. The tenant seeks:

1. To cancel a Notice to End Tenancy given for unpaid rent;
2. A monetary Order for compensation for damage or loss;
3. An Order that the landlord comply with the Act.

The landlord's seek:

1. An Order of Possession based on a Notice to end Tenancy given for unpaid rent;
2. A monetary Order for unpaid rent;
3. An Order to be allowed to retain the security deposit; and
4. An Order to recover the filing fee paid for this application.

Background and Evidence

The tenant agrees that sometimes her paycheques do not coincide with the date the rent is due and she makes her rental payments late. The tenant says she was served with a 10 day Notice to End Tenancy for unpaid rent in person on December 15, 2009. The tenant says she does not owe the rental arrears. The tenant says that she has paid electric and gas bills that off-set the rental arrears the landlord seeks. The tenant says there are 2 rental units with 8 people downstairs and 2 people upstairs. The tenant says that the two rental units were to split the utility charges 60% for downstairs and

40% upstairs. The tenant says this arrangement became a battle ground between the two rental units. The tenant says she asked the landlord to put the bills in their own name and raise the rent but the landlords refused. The tenant says that when the downstairs tenants vacated in September 2009 they had the hydro cut leaving this tenant with no choice but to put it in her own name. The tenant says she refused to put the Terasen in her own name and asked the landlords to put it in their own name and raise the rent instead. The tenant says the landlord's refused and the Terasen gas was cut off. The tenant says it wasn't until November 2009 that the landlord's put the gas in their own name and began paying for the gas. The tenant says she is claiming \$1,500.00 to cover hydro and/or gas charges that she paid that she believes she should not have paid. However, in her written submissions the tenant says all she is asking is that the landlords return her security deposit and give her until the end of February 2010 to vacate.

The landlord says the tenant never pays her rent on time and frequently makes part payments. The landlord produced a copies of receipts issued over the past year showing the scattered payments. The landlord said on November 28, 2009 the tenant paid \$500.00 toward her November 1st rent and signed a note agreeing that she owed \$500.00 for November's rent. The landlord testified that to date the tenant has not paid the \$500.00 balance owing from November nor has she paid December or January's rent.

With respect to the tenant's claims regarding electricity or gas, the landlords submit a tenancy agreement signed by the parties which makes no provision for the payment of hydro or electricity by the landlord. The landlord says it has always been the tenant's responsibility to pay BC Hydro and Terasen Gas since this tenancy began September 1, 2008. The tenant was to arrange accounts in her own name. The landlord says there was another tenant in the home in the past and the parties had an agreement between them to share these costs but that tenant has now vacated and the agreement between those two tenants had nothing to do with the landlord. The landlord says they were forced to take over payment of the Terasen gas in November when the service was cut

off because the tenants did not pay the bills. The landlord says they do not owe the tenant anything for utility charges and they are claiming the rental arrears for November of \$500.00 and unpaid rent for December, 2009, January 2010 and February 2010.

The tenant agrees she has not paid rent for December or January.

Analysis

The tenant's application to dispute the 10 day Notice to End Tenancy had to have been filed within 5 days of service. The tenant did not file her application until 6 days after service. In any event, the evidence shows that there are rental arrears and the landlord is therefore entitled to an Order of Possession.

With respect to the rental arrears, I accept the evidence of the landlord with respect to the arrears for November 2009. I also accept tenant's own testimony that she has not paid rent for December 2009 or January 2010. I will therefore allow the landlord a monetary order in the sum of \$2,500.00. In partial satisfaction of that monetary order I will allow the landlord to retain the security deposit.

Because I will be issuing a 2 day Order of Possession in this matter I dismiss the landlord's claim for February rent. If the tenant does not vacate the premises within the time required, the landlord is given leave to reapply for February's rent.

I dismiss the tenant's claim for \$1,500.00 finding that she has not met the burden of proving that claim.

Filing Fees

I find that the landlord is entitled to recover the filing fees paid for this application.

Calculation of total Monetary Award

Rental Arrears	\$2,500.00
Filing Fees for the cost of this application	50.00
Less Security Deposit and interest from August 22, 2008 to the date of this Order	-502.70
Total Monetary Award	\$2,047.30

Conclusion

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord is provided with a formal copy of an order for the total monetary award as set out above. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Provincial Court of British Columbia.