

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call this date to deal with the landlord's application for an Order of Possession for unpaid rent and utilities, for a monetary order for unpaid rent and utilities, for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee from the tenant for the cost of this application.

The landlord attended the hearing and gave testimony, but the tenants did not attend the hearing.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent and utilities?

Is the landlord entitled to a monetary order for unpaid rent and utilities?

Is the landlord entitled to a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

Rent in the amount of \$600.00 is due on the 1st day of each month. The tenancy began on April 1, 2009, and on May 1, 2009 the tenants paid a security deposit in the amount of \$300.00. The landlord testified that he allowed the tenants to move in prior to paying the security deposit because they did not have the money at the time.

The landlord provided written evidence in advance of the hearing that includes a copy of the 2 pages of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities along with a copy of the Proof of Service of that Notice. The landlord gave oral testimony that the notice was sent to the tenants by registered mail on February 4, 2010 by addressing the envelope to both tenants. However, the Proof of Service states that the tenants were

served by registered mail on February 1, 2010. The landlord testified that he had hoped to be home in Surrey prior to the hearing, however was held up in Salmon Arm and did not have his paperwork with him. He stated that the Proof of Service document has an incorrect date on it, and referred to the documents from Canada Post, which prove that the tenants were served on February 4, 2010, not February 1, 2010.

The landlord provided further testimony that he served both tenants with the Application for Dispute resolution and notice of hearing documents by registered mail on March 5, 2010, but was not able to provide any tracking number from Canada Post, nor did he provide copies of the receipt or registered mail ticket item.

The landlord testified that the tenants abandoned the unit along with their furniture and 2 cats. A girlfriend of one of the tenants had told him in early February, 2010 that she was going to the residence to check on the cats every few days, and that one of the tenants would be returning later in the month. The tenant did not return, however, and the girlfriend later told the landlord that she was no longer his girlfriend, and she was no longer looking after the cats. These conversations took place by telephone, and the landlord did have a contact number for her, but not for the tenants. He stated that one of the tenants had moved to the N.W.T. in December, and has no idea when the other tenant left. The landlord took the 2 cats to the SPCA on March 5, 2010 in Salmon Arm.

The rented unit is a mobile home on private property, not in a manufactured home park. He stated that the furniture belonging to the tenants is still inside the unit, and the place is a mess. A van was also left in the driveway, but it was gone by March 5, 2010. An old couch remains in the driveway.

The tenancy agreement, which was provided as evidence in advance of the hearing, shows the names of both tenants, yet only one of the tenants signed the agreement. The landlord is claiming from both tenants, stating that if one did not pay, the other would be financially responsible.

The landlord's claim is for outstanding rent for the months of December, 2009, as well as January, February, March and April, 2010. When questioned about why he did not

serve the notice to end tenancy prior to February, 2010, the landlord responded that one of the tenants worked for him at one time, and he trusted him to pay the arrears.

The landlord is also claiming BC Hydro bills that were supposed to be paid by the tenant for the months of April, June, August, October and December, 2009, but did not provide any copies of those bills. He now also has a new bill for that unit. The tenancy agreement shows that the tenants were to pay for electricity however, when asked how the landlord collected such utilities from the tenants, he stated that he would tell them what utilities were due, and the tenants made no payments towards those bills. He also stated that the tenants were told at the outset of the tenancy that they were to transfer the BC Hydro account into their name, but they never did, and he received the bills.

Analysis

The landlord was at a disadvantage by not having his paperwork before him due to his being held up in the Interior of BC while his paperwork was in Surrey.

Due to the discrepancy in the proof of service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and no evidence of service of the Application for Dispute Resolution and notice of hearing documents, I am not satisfied that the tenants have received notice, and therefore decline to make an Order of Possession. Further, I have no evidence before me that the tenants were ever given copies of the utility bills, nor do I have copies of those bills, and as such, the landlord has failed to prove the amounts.

The *Residential Tenancy Act* states that:

46 (6) If

- (a) A tenancy agreement requires the tenant to pay utility charges to the landlord, and
- (b) The utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

Conclusion

The landlord's application is dismissed in its entirety with leave to reapply.

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: April 15, 2010.

Dispute Resolution Officer