



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?

Background and Evidence

This month-to-month tenancy started in August 2010. The Landlord says rent is \$800.00 per month plus utilities (gas and hydro). The Tenants say rent is \$800.00 per month which includes one utility (either gas or hydro). In other words, the Tenants claim \$150.00 of the \$800.00 rent was to be for the payment of one utility.

The Tenants said they asked the Landlord at the beginning of the tenancy for a written agreement setting out which utility they were to be responsible for but the Landlord refused to do so and said they would work it out after a probationary period. The Tenants said that after 3 months, the Landlord had still not approached them about which utility they were supposed to pay so on or about October 21, 2010, they put the hydro bill in their name (which is paid by Welfare together with a rent payment of \$800.00). The Tenants said sometime later the Landlord confronted them with a number of unpaid gas bills (and a disconnection notice) addressed to "owner/occupant" which he wanted them to pay and accused them of being squatters.

On December 24, 2010, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 24, 2010 by registered mail. The Notice alleged that the Tenants had unpaid rent of \$800.00 that was due on December 1, 2010. The Tenants admit that they have not paid rent for December 2010 and January 2011 but claim they were entitled to withhold rent for at least one month because the Landlord was not paying the gas bill since August 2010. The Tenants also said that they are moving and do not oppose the Landlord's application for an Order of Possession.

Analysis

Section 13 of the Act says that a Landlord must prepare a written tenancy agreement setting out such things as the amount of rent and which services or facilities are included in the rent. Consequently, in this matter, the Landlord has the burden of proof to show that rent did not include utilities. In support of his position, the Landlord said he filled out a Shelter Information form for the Tenants at the beginning of the tenancy which shows that rent was \$800.00 and that nothing was put down for utilities. The Landlord did not provide a copy of this document as evidence at the hearing. However, I find that it could also be argued that a separate amount was not shown for utilities because the Tenants were not supposed to be responsible for them. Furthermore, nothing is stated on the Landlord's 10 Day Notice dated December 29, 2010 about the Tenants having unpaid utilities and he did not make a claim for it in this proceeding. Consequently, I find that there is insufficient evidence to conclude that rent did not include any utilities and I find instead that it did include an amount equal to \$150.00 for the payment of one utility as alleged by the Tenants.

Although the Tenants argued that they made an overpayment of \$150.00 per month from August to November 2010 because the Landlord did not pay the gas bill, I find that there is no merit to this argument. The Tenants admitted that the gas account was never put in their names and they never made a payment on it. Consequently, I conclude that the Landlord remains responsible for that account whether he has paid it yet or not. Furthermore, even if the Tenants had overpaid, they would not be entitled to withhold a rent payment until they had first received an Order from the Residential Tenancy Branch authorizing them to do so. As a result, I find that the Tenants are responsible for paying rent of \$800.00 for December 2010 and for January 2011 and that those amounts remain unpaid.

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution (if they are claiming that the amount is not owed). If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time. Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 5 days after it was mailed, or on December 29, 2010. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount no later than January 4, 2011.

I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after service of it on the Tenant. I also find that the Landlord is entitled to recover rent arrears in the amount of \$1,600.00 as well as the \$50.00 filing fee for this proceeding.

The Landlord claimed during the hearing that the Tenant did not pay a security deposit and as a result, that part of the Landlord's claim is dismissed without leave to reapply.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$1,650.00** have been issued to the Landlord. A copy of the Orders must be served on the Tenant; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: January 25, 2011.

Residential Tenancy Branch