



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

Landlord: OPR, MNR, MNSD, MNDC, FF
Tenant: CNR, FF

Introduction

This hearing was convened by way of conference call to deal with applications filed by the landlord and the tenant. The landlord has applied for an Order of Possession for unpaid rent or utilities; for a monetary order for unpaid rent or utilities; for an order permitting the landlord to retain the security deposit in partial or full satisfaction of the claim; 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 tenant has applied for an order cancelling a notice to end tenancy and to recover the filing fee from the landlord for the cost of this application.

The landlord attended the conference call hearing however, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents, as well as having received a notice of today's hearing from the Residential Tenancy Branch concerning the tenant's application, the tenant did not attend the conference call hearing. The landlord gave affirmed testimony and provided evidence in advance of the hearing. All information and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

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

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

Is the landlord entitled to retain the security deposit in partial or full satisfaction of the claim?

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

Is the tenant entitled to an order cancelling the notice to end tenancy?

Background and Evidence

This fixed term tenancy began on April 1, 2010 and expires on March 31, 2011. Rent in the amount of \$1,450.00 is payable in advance on the 1st day of each month. On March 22, 2010, the landlord collected a security deposit from the tenant in the amount of \$725.00 and collected a pet damage deposit from the tenant in the amount of \$725.00 at a later date.

The landlord testified that the male tenant named in the tenancy agreement, a copy of which was provided in advance of the hearing, moved from the rental unit about 4 months ago.

He further testified that the tenant failed to pay rent in the month of January, 2011. The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which was provided in advance of the hearing. That notice states that the tenant failed to pay rent in the amount of \$1,450.00 that was due on January 1, 2011. It is dated January 4, 2011 and contains an expected date of vacancy of January 14, 2011. The landlord testified that he attended at the rental unit to serve the notice on January 4, 2011, knocked on the door, but no one answered. He then put the notice in the tenant's mail slot.

The landlord claims \$1,450.00 for unpaid rent for the month of January, 2011 as well as loss of revenue for the month of February, 2011 in the amount of \$1,450.00.

The landlord also testified that the tenant is responsible for 60% of the utilities (Terasen Gas and BC Hydro), and provided copies of 3 bills. He stated that he delivered those bills to the tenant with the Landlord's Application for Dispute Resolution by registered mail on January 13, 2011. Copies of those bills were also provided to the Residential Tenancy Branch, and when questioned about the dates, the landlord testified that he has an on-line account with both utilities and was able to receive the bills electronically the date they were prepared. The first Terasen Gas bill is a statement of account as of December 9, 2010 in the amount of \$156.97, for which the landlord claims \$94.18. The second Terasen Gas bill is dated January 11, 2011 in the amount of \$115.55 for which the landlord claims \$69.33. A BC Hydro bill dated January 12, 2011 was also provided in the amount of \$107.97 for which the landlord claims \$64.78.

Analysis

In the circumstances I find that the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities in accordance with the *Residential Tenancy Act* on January 4, 2011. That notice is deemed to have been served 3 days after placing it in

the mailbox, being January 7, 2011. I further find that the tenant was served with the Landlord's Application for Dispute Resolution in accordance with the *Act*.

The *Residential Tenancy Act* also states as follows:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

And further,

(4) Within 5 days after receiving a notice under his section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

I find that the tenant made an application for dispute resolution on January 12, 2011, which is within the 5 days provided for in the *Act*, however the tenant's failure to attend the hearing negates the application. I also find that the tenant did not pay the outstanding rent, and therefore the landlord is entitled to an Order of Possession.

As for the monetary order, I find that the landlord has established a claim for \$1,450.00 for unpaid rent for the month of January, 2011, as well as loss of revenue for the month of February, 2011 in the amount of \$1,450.00. The landlord has also established a claim for unpaid utilities in the amount of \$228.29. The landlord is also entitled to recovery of the filing fee.

The *Residential Tenancy Act* also states that a landlord may only claim against a pet damage deposit for damages caused by a pet. I have heard no evidence of that, however, pursuant to Section 72 (2) (b), I order that the pet damage deposit be set off from the amounts due to the landlord from the tenant.

Conclusion

For the reasons set out above, the tenant's application for an order cancelling the notice to end tenancy is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant. If the landlord serves the Order of Possession and the tenant does not comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I further order that the landlord retain the security deposit and pet damage deposit in the amount of \$1,450.00 in partial satisfaction of the claim, and, pursuant to Section 67 of the *Residential Tenancy Act*, I grant a monetary order in favour of the landlord for the sum of \$1,728.29. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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: January 31, 2011.

Residential Tenancy Branch