

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This is an application by the Landlord requesting an order of possession for unpaid rent and utilities, for a monetary order for unpaid rent and utilities and the recovery of the filing fee.

Both parties attended the conference call hearing and gave affirmed testimony.

### Issue(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?

### Background and Evidence

This tenancy began on June 19, 2010 on a month to month basis as shown in the signed tenancy agreement. The monthly rent was \$800.00 payable on the 1<sup>st</sup> of each month and the requirement to pay ½ of the BC Hydro Bill. The \$400.00 security deposit was paid on June 23, 2010.

The 10 day notice to end the tenancy for unpaid rent and utilities was served in person on December 22, 2010 with a move out date of December 31, 2010. I note the 10 days to move out of vacate the rental unit should have been January 1, 2011. The notice indicates unpaid rent of \$600.00 that was due on December 1, 2010 and failure to pay the utilities of \$80.00 on the same date. As of the date of this hearing the Tenant has not filed an application for dispute resolution regarding this notice.

The Landlord has submitted three letters of notice of unpaid rent and utilities by the Tenant. The first note is dated October 28, 2010 reminding the Tenant of the November rent due of \$800.00 with the \$100.00 outstanding balance not yet paid for the October 2010 rent. The note also indicates a \$55.00 amount owed by the Tenant for his portion of the BC Hydro bill. The second note is dated November 14, 2010 reminding of the Tenant of the upcoming December 2010 rent of \$800.00 due as well as \$205.00 overdue from November 2010 rent. The note also indicates \$75.00 as ½ of the BC

Hydro bill due for October and November 2010. The Landlord indicates that this is non inclusive of the \$55.00 due from the October note. The Landlord explains that the \$55.00 amount is overdue utilities from the summer months. The Landlord has not provided any supporting evidence to contradict the written notes. The third note is dated December 15, 2010 advising the Tenant that December 31, 2010 would be the Tenant's last day of tenancy based upon the 10 day notice to end the tenancy. It shows an outstanding amount of \$680.00.

The Tenant does not dispute the BC Hydro utilities bill as he was not given a copy of the current bill filed in evidence until he received this application for dispute. The Tenant admits to owing \$100.00 for utilities. The Tenant claims that an arrangement was made with the Landlord to apply the \$400.00 security deposit as rent for December 2010. The Tenant has indicated that the Co-Tenant listed on the signed tenancy agreement vacate the rental unit on September 1, 2010. The Landlord disputes the claim of the Tenant that he consented to apply the security deposit as rent for December 2010.

### Analysis

Based upon the undisputed 10 day notice to end the tenancy for unpaid rent and utilities, I find that the Tenant has conclusively accepted that the tenancy has ended. I grant the Landlord an order of possession.

Also based upon the 10 day notice to end the tenancy and affirmed evidence of the Landlord supported by the three notes sent to the Tenant, I find that the Landlord has established a claim for unpaid rent and utilities of \$680.00. The Landlord is also seeking claim unpaid rent for the month January 2011 of \$800.00. The total claim by the Landlord is limited by the amount set on the application for dispute resolution at \$680.00.

As the Landlord has been successful in his application I award \$50.00 for the recovery of the filing fee.

I find that since the Tenant still has possession currently of the rental unit that I will not apply the security deposit to the awarded amount. The Landlord is granted a monetary order for \$730.00.

Conclusion

The Landlord is granted an order of possession.

The Landlord is granted a monetary order for \$730.00.

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 20, 2011.

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Residential Tenancy Branch