



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord and the tenant agreed that the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities on the tenant's door on January 3, 2011. The tenant confirmed that she received a copy of the dispute resolution hearing package the landlord sent her by registered mail on January 13, 2011. I am satisfied that the landlord sent these documents and his evidence package to the tenant in accordance with the *Act*.

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 award for unpaid rent and utilities? Is the landlord entitled to recover his filing fee for this application from the tenant?

Background and Evidence

The tenant moved into this rental unit on November 15, 2009, after living in another of the landlord's rental units prior to that time. The present monthly rent is set at \$775.00, payable on the first of each month, plus one-third of the gas and hydro costs for this property. The landlord testified that he continues to hold the tenant's \$600.00 security deposit plus interest paid on her previous rental unit on October 26, 2005.

The landlord's January 12, 2011 application requested an Order of Possession and a monetary award in the amount of \$726.90. The tenant said that she could vacate the rental premises by February 17, 2011, as she was planning to travel abroad as of that date.

The landlord provided undisputed evidence that he posted the 10 Day Notice on the tenant's door on January 3, 2011, because she had not paid her \$775.00 January 2011 rent nor \$254.98 in utility bills requested on December 1, 2010. The parties agreed that the tenant issued a cheque to the landlord for \$775.00 on January 13, 2011. When the landlord received this cheque on January 14, 2011, he issued the tenant a receipt "Not for Rent, for Use + Occupancy Only." He entered this receipt into written evidence.

The landlord said that he applied the \$775.00 to the tenant's outstanding debt at that time. He said that this left \$351.90 in unpaid utilities and pet cleanup service bills owing at that time (i.e., \$254.98 previously unpaid utility bills; \$27.25 November 2010 Hydro; \$24.87 November gas; \$44.80 December pet cleanup service). The landlord testified that he had received additional utility invoices of \$107.21 and \$26.88 since that time. He testified that the tenant now owes \$485.99 for utilities and rent-related items (i.e, the monthly dog waste removal fee agreed to by the parties). The landlord also requested a monetary award for the pro-rated portion of rent owing for February 2011, until the tenant ends her tenancy.

Analysis

Order of Possession

The tenant failed to pay the amount identified as owing for rent and utilities within five days of January 7, 2011, the date when she was deemed to have received the landlord's 10 Day Notice to End Tenancy. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of January 7, 2011. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by January 17, 2011. As that has not occurred, I find that the landlord is entitled to an Order of Possession to take effect by one o'clock in the afternoon on February 17, 2011. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by that date and time, the landlord may enforce this Order in the Supreme Court of British Columbia.

Monetary Award

Based on the undisputed evidence of the landlord, I allow the landlord's application for a monetary award of \$485.99. In addition, I allow the landlord a monetary award for the pro-rated rent owing for the first 17 days of February 2011 (i.e., February 1, 2011 until February 17, 2011). This monetary award is calculated by multiplying the \$775.00 monthly rent by 17/28, resulting in a monetary award in the landlord's favour of \$470.53.

Since the landlord has been successful in his application, I allow him to recover his \$50.00 filing fee from the tenant.

The landlord testified that he continues to hold the tenant's security deposit of \$600.00 plus interest from October 26, 2005 until the date of this decision. Although the landlord's application does not seek to retain the deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit plus interest in partial satisfaction of the monetary award.

Conclusion

The landlord is provided with a formal copy of an Order of Possession effective at one o'clock in the afternoon on February 17, 2011. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary award in the following terms which allows the landlord to obtain unpaid rent and utilities, to recover his filing fee, and to retain the tenant's security deposit plus interest.

Item	Amount
Unpaid Utilities & Rent-Related Services	\$485.99
Pro-Rated Rent February 1- 17, 2011 (\$775.00 x 17/28 = \$470.53)	470.53
Less Security Deposit Plus Interest (\$600.00 + \$21.24 = \$621.24)	-621.24
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$385.28

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.