



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call to deal with the landlords' application for an Order of Possession for unpaid rent or utilities; for a monetary order for unpaid rent or utilities; for an order permitting the landlords to keep all or part of the security deposit or pet damage 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.

One of the named landlords attended the conference call hearing and called a witness. The tenant also appeared and called a witness. The parties and the witnesses each gave affirmed testimony and the parties were given the opportunity to cross examine each other and the witnesses on their evidence.

The landlord also provided an evidence package in advance of the hearing, and the landlord's witness testified that he served a copy of that evidence package on the tenant by serving a person who apparently resides with the tenant on February 17, 2011. The witness for the tenant denied having been served as testified by the landlord's witness. During the course of the hearing, it was agreed that the tenant had a copy of all documentation that was in the landlord's evidence package with the exception of the first page, and I decided that all evidence, with the exception of that page will be considered in this Decision. All testimony provided has been reviewed and is also considered in this Decision.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent or utilities?

Are the landlords entitled to a monetary order for unpaid rent or utilities?

Are the landlords entitled to an order permitting the landlords to keep all or part of the security deposit or pet damage deposit in partial or full satisfaction of the claim?

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

Background and Evidence

This month-to-month tenancy began on August 1, 2010 and the tenant still resides in the rental unit. Rent in the amount of \$800.00 per month is payable in advance on the 1st day of each month, although there is no written tenancy agreement. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$400.00. The rental unit is a basement suite in a house, with another tenant residing in the upper unit. The landlords do not reside at the rental house.

The landlord testified that the tenant failed to pay rent in full for the month of January, leaving a balance outstanding of \$420.00. She also testified that the tenant owes \$397.21 for outstanding utilities, being Terasen Gas and BC Hydro. The tenant further failed to pay any rent for the month of February, 2011, and on February 4, 2011 the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which was provided in advance of the hearing. The notice states that the tenant failed to pay rent in the amount of \$1,250.00 that was due on February 1, 2011, is dated February 4, 2011 and contains an expected date of vacancy of February 14, 2011.

During cross examination, the landlord was asked if any portion of the utility bills had been paid, to which she responded that she did not know.

The landlord claims \$420.00 for rental arrears for January, 2011, \$800.00 for unpaid rent for February, 2011, \$397.21 for outstanding utilities, and \$800.00 for rent for the month of March, 2011.

The landlord's witness testified that he was with the landlords' son who delivered the notice to end the tenancy. He stated that they spoke to the tenant's roommate through the door but she refused to open the door and told them she did not want to deal with them. He further stated that the notice was then taped to the door.

The witness also testified that he was with the landlords' son when the evidence package was served, and that on February 17, 2011 they attended the rental unit, and the roommate of the tenant opened the door leaving the chain attached, and the roommate was handed the evidence package through the opening.

The tenant testified that a verbal tenancy agreement was entered into by the parties on August 1, 2010, and he dealt with the landlords' son. He told the tenant that he would be sharing the utilities with the tenant upstairs, and the two tenants agreed to a 50%

split. The gas heat was not being used at the time, as no heat was required in the unit during the month of August. By the end of September, the furnace was running but the unit was not getting warm. By the 3rd week of October, it was cold but the furnace ran about 70% of the time. He asked the upstairs tenant to adjust the heat, but he replied that his unit was also cold. The tenant contacted the brother of the landlord, who is the contact person for repairs and sometimes collected the rent. The gentleman looked at the furnace and gave both tenants a small electric heater to use. About 3 weeks later, he returned with a furnace repair person and fixed the blower motor, which partially solved the heat problem.

The tenant further testified that he told the landlord he was getting a roommate, and the landlord replied that the rent would be raised to \$1,000.00. The tenant argued that the landlord could not legally do that. The tenant had already placed advertisements to rent a bedroom, and had to change his advertisement. He had inquiries prior to that and 2 perspective roommates were interested, but backed out when the rent was increased. It took another month for the tenant to find a roommate, which put him late on the rent payments.

The tenant in the upper unit refused to deal with him on utilities because he had been late with the utilities payments, and the utilities are in the name of the upstairs tenant. He stated that the utilities were all paid up to date by the end of 2010. He was told by the upstairs tenant that he had made an agreement with the landlord that he would be deducting the portion of the utilities that belonged to the downstairs tenant from his rent, and the landlord would then collect the utilities from this tenant. An agreement was drafted up by the tenant and signed by both tenants. A copy of that agreement was also provided in advance of the hearing. On January 30, 2011 he received a copy of the utilities from the tenant upstairs.

He further stated that he agreed to pay all outstanding rent and utilities owing, but the landlord has refused to accept his offer. He stated he can pay the rent due of \$1,220.00 and \$335.86 for the utilities next Tuesday. He testified that his portion of the utilities currently outstanding is \$335.86, not \$397.21 as stated by the landlord. He testified that one of the bills has an overdue amount of \$102.25 which was paid prior. He stated that the gas bill totalling \$163.00 is 60% owed by him, or \$97.80 and his portion of the \$396.77 hydro bill is \$238.06, for a total of \$335.86.

The tenant's witness testified that she moved in 3 months ago. She pays the tenant \$450.00 per month. She further testified that the landlord's son attended there to serve a notice to end the tenancy but was very abusive so she refused to open the door. She stated that he left the notice taped to the door and she picked it up about an hour later.

On another occasion, the landlords' son attended to serve another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and again she refused to open the door. She left the chain on allowing space in the doorway and the landlords' son handed her the notice. She gave it to the tenant when he returned home that day. She also testified that at no time was she ever given an evidence package.

Analysis

In the circumstances, I find that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on February 4, 2011 by posting it to the door of the rental unit. That notice is deemed to have been served on February 7, 2011. The tenant had 5 days from that date to pay the rent in full or apply for dispute resolution to dispute the notice. The tenant did not dispute the notice or pay the rent in full, and is therefore conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. The tenant has promised payment, but the landlord has requested an Order of Possession. I further find that the effective date of the notice is 10 days after the tenant is deemed to have been served with the notice, which is February 17, 2011. I therefore find that the landlord is entitled to an Order of Possession.

With respect to the monetary order, I find that the tenant is in arrears of rent the sum of \$1,220.00. With respect to utilities, I find that the landlord has not established the sum of \$397.21, but the tenant has admitted to owing the sum of \$335.86. With respect to the landlords' claim for a monetary order for rent for the month of March, 2011, I find that the tenant has breached a term of the tenancy by failing to pay rent when it is due, and therefore, as a general rule the landlord is entitled to loss of rent up to the earliest time that the tenant could have legally ended the tenancy. However, if the landlord rents the unit during the month of March, the landlord would be collecting rent from two different tenants for the same month. The landlord is required under the *Act* to prove that the landlords have attempted to mitigate any loss by proving what efforts have been made to re-rent the unit. The landlords have not proven mitigation, but I also find that the tenant has remained in the rental unit beyond the effective date of the notice to end the tenancy. I find that the landlord ought to be given the opportunity to re-apply for loss of rent for the month of March, 2011 if they can provide evidence of mitigation. Therefore, the landlords' application for loss of rent is hereby dismissed with leave to reapply.

The landlords are also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords on 2 days notice to the tenant. The tenant must be served with the Order of Possession. If the tenant is served with the order, and the tenant fails to 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 landlords retain the security deposit in the amount of \$400.00 and I grant a monetary order pursuant to Section 67 of the *Residential Tenancy Act* in favour of the landlords in the amount of \$1,205.86. This order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

The landlords' application for loss of rent is hereby dismissed 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: February 25, 2011.

Residential Tenancy Branch