



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes: OPR, MNSD, MNR, MNDC, FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and utilities; to apply the security deposit towards its monetary award; and to recover the cost of the filing fee from the Tenant.

The Landlord's agent gave affirmed testimony at the Hearing.

The Landlord's agent testified the Notice of Hearing documents were mailed to the Tenant at the rental unit, by registered mail, on February 16, 2011. The Landlord provided the registered mail receipt and tracking number in evidence.

Based on the affirmed testimony and documentary evidence of the Landlord, I find that the Tenant was duly served with the Notice of Hearing Package pursuant to the provisions of Section 89(1)(c) of the Act. Service of documents this manner is deemed to be affected 5 days after mailing the documents. In spite of being served with the documents, the Tenant did not sign into the teleconference and the Hearing proceeded in his absence.

The Landlord testified that the Tenant moved out of the rental unit on February 24, 2011 and the Landlord has taken possession of the rental unit. Therefore, the Landlord no longer requires an Order of Possession and this portion of his application is dismissed.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for unpaid rent for the month of February, 2011, and unpaid utilities?

Background and Evidence

The rental unit is the main floor of a house. A copy of the tenancy agreement was provided in evidence. Monthly rent is \$1,300.00, due on the first day of each month. Rent does not include utilities. The Tenant paid a security deposit in the amount of \$650.00 on July 7, 2010.

The cost of utilities was split between the rental unit and two other suites in the house. The Tenant was responsible for 60%, another occupant was responsible for 30%, and another occupant was responsible for 10% of the cost of gas and electricity bills. A clause in the addendum to the tenancy agreement provides:

“Tenants shall registered for [electric company] and [gas company] accounts under their name. Tenants agreed to pay 60% of the total amount accordingly if all 3 units was rented out. If one or more of them are vacant, tenants who resides there have to share the remaining portion.” (reproduced as written)

The Tenant owes \$631.22 in unpaid gas bills and \$501.63 in unpaid electricity bills. In addition, the electricity company charged the Landlord a re-connection fee, and the Landlord seeks to recover \$70.00 for that cost. The Landlord provided copies of his agent's letter dated February 2, 2011, utility bills and a Final Notice of Disconnection from the electric company in evidence.

The Tenant did not pay any rent for the month of February, 2011. The Landlord's agent issued a Notice to End Tenancy for Unpaid Rent on February 7, 2011, and served the Tenant in person at the rental unit on February 7, 2011.

Analysis

It is important to note that there are several clauses in the addendum to the tenancy agreement that are unenforceable as they are contrary to Sections of the *Residential*

Tenancy Act (the “Act”) and the *Residential Tenancy Regulation* (the “Regulation”) , i.e.

- clause 4, contrary to Section 67 of the Act;
- clause 7, contrary to Section 44 of the Act;
- clause 8, contrary to Section 67 of the Act;
- clause 10, contrary to Section 44 of the Act; and
- clause 21, contrary to Section 7 of the Regulation.

Based on the documentary evidence and undisputed testimony of the Landlord’s agent, and the absence of any evidence to the contrary from the Tenant, the Landlord has established a monetary award, as follows:

Unpaid rent for February, 2011	\$1,300.00
Unpaid utilities	<u>\$1,202.85</u>
TOTAL:	\$2,502.85

Pursuant to the provisions of Section 72 of the Act, the Landlord may apply the security deposit in partial satisfaction of his monetary claim. No interest has accrued on the security deposit.

The Landlord has been successful in his application and is entitled to recover the cost of the filing fee from the Tenant.

I hereby provide the Landlord with a monetary order against the Tenant, calculated as follows:

Monetary award	\$2,502.85
Recovery of the filing fee	\$50.00
Less security deposit set-off	<u><\$650.00></u>
TOTAL amount due to Landlord after set off	\$1,902.85

Conclusion

I hereby provide the Landlord a Monetary Order in the amount of **\$1,902.85** against the Tenant. This Order must be served on the Tenant and may be filed in the Provincial Court of British Columbia (Small Claims) 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: March 09, 2011.
