

DECISION

Dispute Codes: OP O

Introduction

By application of May 10, 2011, the landlord seeks an Order of Possession to uphold the end of tenancy date and the date on which tenants must vacate set by the fixed term rental agreement. The landlord also sought a Monetary Order for unpaid rent and utilities.

In addition, I have exercised the discretion granted under section 64(3)(c) of the Act to permit the landlord to amend the application to include a request to recover the filing fee for this proceeding from the tenants and to retain the security deposit in set off against the balance.

In spite of having been served with the Notice of Hearing in person on May 11, 2011 and May 13, 2011 as verified by written statements from professional security personnel, engaged for that purpose, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore it proceeded in their absence.

At the commencement of the hearing, the landlord's agent advised that the tenants had vacated the rental unit and withdrew the request for the Order of Possession.

Issues to be Decided

The application requires a decision on whether the landlord is entitled to a Monetary Order for unpaid rent and utilities and filing fee and authorization to retain the security deposit in set off against the balance owed.

Background and Evidence

This tenancy began on February 1, 2011 under a fixed term rental agreement to May 31, 2011. The agreement was on the standard form available from the Residential Tenancy Branch and the parties had initialled the portion of the form electing that, at the end of the fixed length of time, "the tenancy ends and the tenant must move out of the residential unit.."

Rent was \$1,900 per month and the landlord holds a security deposit of \$950 paid on January 24, 2011.

During the hearing, the landlord submitted evidence that the tenants had paid the rent for May 2011. In addition, the landlord's agent submitted copies of unpaid utility bills which are in the landlords name but for which the tenants were responsible under the rental agreement. The landlord claims:

1. Unpaid gas invoice for the period April 11, 2011 to May 11, 2011 - \$173.90
2. Unpaid hydro invoice for the period February 1, 2011 to March 16, 2001 - \$174.91
3. Unpaid hydro invoice for the period March 17, 2011 to April 17, 2011 – \$225.58.

Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due. Section 7 of the *Act* provides that if one party to a rental agreement suffers a loss to the non-compliance of the other with the legislation or rental agreement, the non-compliant party must compensate the other for the loss.

Accordingly, I find that the tenants owe to the landlord the rent for May 2011 and the unpaid utilities available to the time of the hearing.

As the application has succeeded on its merits, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenants, and I hereby authorize and order that the landlord may retain the security deposit in set off against the balance owed.

Thus, I find that the tenants owe the landlord an amount calculated as follows:

Rent for May 2011	\$1,900.00
Gas bill for April 11 to May 11, 2011	173.90
Hydro bill for February 1 to March 16, 2011	174.91
Hydro bill for March 17 to April 17, 2011	225.58
Filing fee	50.00
Sub total	\$2,524.39
Less retained security deposit (No interest due)	- 950.00
TOTAL remaining for Monetary Order	\$1,574.39

Conclusion

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order for \$1,574.39, enforceable through the Provincial Court of British Columbia, for service on the tenants.

The landlords remain at liberty to make application for any unpaid utilities and damages to the rental unit as may be ascertained now that the tenancy has ended.

June 2, 2011