



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, OPR, OPC, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession, a monetary Order for unpaid rent and utilities, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent and Utilities.

This hearing commenced at the scheduled start time of 11:00 a.m. on June 01, 2011. The male Landlord was present at the start of the hearing. By the time the hearing ended at 11:28 a.m., neither Tenant had appeared. I find that the Tenant failed to diligently pursue their Application for Dispute Resolution and I therefore dismiss their Application for Dispute Resolution, without leave to reapply.

The Landlord stated that he personally served copies of the Application for Dispute Resolution and Notice of Hearing to the female Tenant on May 16, 2011. The Landlord stated that he did not serve copies of the Application for Dispute Resolution and Notice of Hearing to the male Tenant, as he believed serving the female Tenant these documents would be sufficient.

During the hearing the Landlord applied to amend the Landlord's Application for Dispute Resolution to include a claim for loss of revenue from June of 2011 and a claim for utility charges for bills the Landlord expects to receive in the near future. As the Tenant was not represented at the hearing and the Tenant did not receive prior notice that the Landlord intended to increase the amount of his monetary claim, I declined the Landlord's request to increase the amount of the monetary claim. In my view, it is unfair to the Tenant to allow an amendment at this point in the proceedings, as the Tenant may have attended the hearing if the Tenant was aware the Landlord was seeking additional compensation.

Preliminary Matter

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to tenants is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the landlord. When a landlord files an Application for Dispute Resolution in which the landlord has applied for a monetary Order, the landlord has the burden of proving that each tenant was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the person;
- (c) by sending a copy by registered mail to the address at which the person resides;
- (d) by sending a copy by registered mail to a forwarding address provided by the tenant;
or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Based on the testimony of the Landlord and in the absence of evidence to the contrary, I find that the female Tenant was personally served with the Application for Dispute Resolution and the Notice of Hearing, pursuant to section 89(1)(a) of the *Act*.

The Landlord submitted no evidence to show that the male Tenant was personally served with the Application for Dispute Resolution or Notice of Hearing and I therefore find that he was not served in accordance with section 89(1)(a) of the *Act*.

The Landlord submitted no evidence that the Application for Dispute Resolution was mailed to the male Tenant and I cannot, therefore, conclude that he was served in accordance with section 89(1)(c) or 89(1)(d) of the *Act*.

There is no evidence that the director authorized the Landlord to serve the Application for Dispute Resolution to the male Tenant in an alternate manner, therefore I find that he was not served in accordance with section 89(1)(e) of the *Act*.

The Landlord submitted no evidence to cause me to conclude that the male Tenant received the Application for Dispute Resolution, therefore I cannot conclude that the Application has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

The Landlord was advised that the male Tenant had not been served with the Application for Dispute Resolution and the Notice of Hearing for the purposes of proceeding with the Landlord's application for a monetary Order. The Landlord was provided with the opportunity to either withdraw the application for a monetary Order or

to proceed with the application for a monetary Order, with the understanding that the male Tenant would not be named on the monetary Order, due to the fact the male Tenant had not been properly served with the Application for Dispute Resolution and the Notice of Hearing.

The Landlord opted to amend his Application for Dispute Resolution by removing the name of the male Tenant in relation to his application for a monetary Order.

When a landlord files an Application for Dispute Resolution in which the landlord has applied for an Order of Possession, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(2) of the *Act*.

Section 89(2) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the tenant;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides; or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Based on the testimony of the Landlord and in the absence of evidence to the contrary, I find that the female Tenant was served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 89(2)(a) of the *Act* and that the male Tenant was served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 89(2)(c) of the *Act*. I based this determination on the Landlord's statement that both Tenants lived at the rental unit and that the female Tenant is an adult.

As both Tenants have been properly served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 89(2)(a) of the *Act*, I find it is appropriate to consider the Landlord's application for an Order of Possession naming both parties.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession; to a monetary Order for unpaid rent and utilities; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord submitted a tenancy agreement that shows this tenancy began on August 01, 2010; that the tenancy was for a fixed term that was to end on July 31, 2011; that the Tenants paid a security deposit of \$475.00; that the Tenants were required to pay monthly rent of \$950.00 by the first day of each month; and that the Tenants were required to pay utilities.

The Landlord stated that the Tenant did not pay any rent for May of 2011 and that they still owe \$458.00 in rent for April of 2011.

The Landlord stated that the male Tenant was personally served with a Ten Day Notice to End Tenancy for Unpaid Rent and Utilities on May 05, 2011, which had a declared effective date of May 16, 2011. The Notice declared that the Tenant owed \$1408.00 in rent from April and May of 2011.

The Landlord stated that the male Tenant was personally served with a One Month Notice to End Tenancy for Cause on May 01, 2011, which had a declared effective date of June 01, 2011.

The Landlord stated that the Tenants were required to pay 60% of hydro costs for the residential complex and that the occupants of the lower suite were required to pay 40% of the hydro costs. He stated that the Tenants currently owe \$253.90 for hydro charges. The Landlord submitted no documentary evidence that establishes the amount of hydro charges currently outstanding.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that this tenancy began on August 01, 2010; that the tenancy was for a fixed term that was to end on July 31, 2011; that the Tenants paid a security deposit of \$475.00; that the Tenants were required to pay monthly rent of \$950.00 by the first day of each month; and that the Tenants were required to pay 60% of hydro bills for the residential complex.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant still owes \$458.00 in rent from April of 2011 and \$950.00 in rent from April of 2011. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,408.00 in outstanding rent to the Landlord.

If rent is not paid when it is due, a landlord may end the tenancy pursuant to section 46 of the *Act* by serving notice to end the tenancy. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the male Tenant was

personally served with a Notice to End Tenancy that directed the Tenant to vacate the rental unit by May 16, 2011, pursuant to section 46 of the *Act*.

As the Tenant had not paid all of the rent that was due on May 01, 2011 and the Landlord served the Tenant with proper notice to end this tenancy, pursuant to section 46 of the *Act*, I find that this tenancy ended on the effective date of the Notice to End Tenancy that was served on May 05, 2011. On this basis I will grant the landlord an Order of Possession that is effective two days after the order is served upon the Tenant.

As the Landlord is being awarded an Order of Possession on the basis of section 46 of the *Act*, I find that I do not need to consider whether the Landlord is also entitled to an Order of Possession on the basis of section 47 of the *Act*.

When making a claim for damage or loss under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

In addition to establishing that a tenant is obligated to pay utility charges, a landlord must also accurately establish the cost of those charges. In these circumstances, I find that the Landlord has submitted no documentary evidence to corroborate his statement that the Tenant's portion of the recent hydro bill is \$253.90. In the absence of a bill or similar documentary evidence that shows the amount of the outstanding hydro bill received by the Landlord, I find that the Landlord has failed to establish that the Tenant owes \$253.90. On this basis, I dismiss the Landlord's application for compensation for unpaid utilities.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I hereby grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$1,458.00, which is comprised of \$1,408.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Pursuant to section 72(2) of the *Act*, I hereby authorize the Landlord to retain the Tenant's security deposit, in the amount of \$475.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$983.00. In the event that the Tenant does not comply with this Order, it may be served on the female Tenant, filed with the Province of British Columbia Small Claims Court 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: June 01, 2011.

Residential Tenancy Branch