



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and utilities, for a loss of rental income, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts. The Tenant applied to cancel a One Month Notice to End Tenancy for Cause dated August 31, 2011.

The Landlord said on September 22, 2011 he served his Application and Notice of Hearing (the "hearing package") on the Tenant in person and received his written acknowledgement of that service. Based on the evidence of the Landlord I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence. The Landlord said he received a copy of the Tenant's hearing package.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent and utility arrears and if so how much?
3. Is the Landlord entitled to compensation for a loss of rental income and if so, how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on December 15, 2009. Rent is \$750.00 per month payable in advance on the 1st day of each month plus 40% of the utilities (gas and hydro) for the rental property. The Tenant paid a security deposit of \$375.00 at the beginning of the tenancy.

The Landlord said the Tenant put a stop payment on his rent cheque for September 2011 and as a result, on September 10, 2011 the Landlord served the Tenant in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 10, 2011. The Landlord said the Tenant did not pay the overdue rent and he believes that the Tenant may have vacated the rental unit although he was not certain of that. The Landlord said the utilities for the rental property are in the name of another tenant in the

rental property and that person advised the Landlord that \$68.00 was owed by the Tenant for utilities for August 2011.

Analysis

Section 46(4) of the Act states that within 5 days of receiving a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or (if they believe the amount is not owed) apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and they must vacate the rental unit at that time.

I find that the Tenant was served in person on September 10, 2011 with a 10 Day Notice to End Tenancy dated September 10, 2011. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount no later than September 20, 2011. I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution to dispute *that Notice*. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after service of it on the Tenant.

I also find that the Landlord is entitled to recover rent arrears for September 2011 in the amount of \$750.00 as well as the \$50.00 filing fee for this proceeding. In the absence of any reliable evidence (such as a utility statement) as to what was owed by the Tenant for gas and hydro for August 2011, I find that there is insufficient evidence to conclude that \$68.00 is owed and that part of the Landlord's claim is dismissed with leave to reapply.

RTB Policy Guideline #3 – Claims for Rent and Damages for Loss of Rent states that a Landlord may elect to end a tenancy and sue the tenant for loss of rent. The damages to which a Landlord is entitled is an amount sufficient to compensate the Landlord for any loss of rent up to the earliest time the Tenant could have legally ended the tenancy. Under section 45 of the Act, a Tenant of a month-to-month tenancy must give a Landlord one full, calendar month's notice in writing that they are ending the tenancy. This means the earliest the Tenant could have ended the tenancy (on September 10, when he was served with the 10 Day Notice) would have been October 31, 2011.

However, s. 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income. I find it unlikely that the Landlord will be able to re-rent the rental unit for the first half of the month of October 2011 and as a result, I award him a loss of rental income in the amount of \$375.00. If the Landlord incurs a further loss of rental income for October 2011, he may re-apply for that amount.

I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

Rent arrears September 2011:	\$750.00
Loss rental income October 2011:	\$375.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,175.00
Less: Security Deposit:	<u>(\$375.00)</u>
Balance Owing:	\$800.00

As a final note, I direct the Landlord's attention to RTB Policy Guideline #1 at p. 9 which states as follows:

"A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable as defined in the Regulations. In such a case, where the other tenants do not pay their share, the tenant whose name is on the bill may claim against the landlord for the other tenant's share of the unpaid utility bills."

Conclusion

The Tenant's application is dismissed without leave to reapply. An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$800.00** have been issued to the Landlord. A copy of the Orders must be served on the Tenant; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: October 03, 2011.

Residential Tenancy Branch