



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenants for the cost of this application.

The landlord attended the conference call hearing, provided evidence in advance of the hearing to the Residential Tenancy Branch and to the tenants, and gave affirmed testimony. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on February 18, 2012, neither tenant attended. The landlord provided evidence of having purchased the registered mail item on February 18, 2012 and provided a copy of the registered mail ticket, and I am satisfied that the tenants have been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided have been reviewed and are considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed term tenancy commenced on December 1, 2010 and expired on November 30, 2011 and then reverted to a month to month tenancy. The tenants still reside in the rental unit. Rent in the amount of \$1,400.00 per month is payable in advance on the 1st day of each month in addition to 40% of the gas and

hydro bills. On November 24, 2010 the landlord collected a security deposit from the tenants in the amount of \$700.00 as well as a pet damage deposit in the amount of \$400.00.

The landlord further testified that the tenants had an agreement with the tenants in the other rental unit in the building wherein the tenants apportioned the utilities at 60% for the other tenants because they had more people residing in that rental unit, and this tenancy requires 40% of those utilities even though the tenancy agreement specifies 50%.

The landlord also testified that the tenants paid different amounts each month for rent and utilities and provided a ledger of rent and utilities paid and owed. The ledger shows that the tenants have not paid rent when it was due for the months of October, November, or December, 2011 or for the months of January or February, 2012. The ledger has a running balance which includes rent, utilities and the \$50.00 filing fee for the cost of a previous Residential Tenancy Branch application, and testified that the tenants had agreed to pay the landlord that fee. A copy of the Decision from that hearing was provided for this hearing, and the landlord's application was dismissed.

The landlord testified that when utility bills were received, the landlord made copies of them and delivered them to the tenants. Copies were also stapled to the notices to end tenancy issued to the tenants from the landlord. The landlord provided copies of 2 Fortis Natural Gas bills for December 20, 2011 and January 19, 2012 as well as a copy of a BC Hydro bill dated January 20, 2012. The gas bills are in the amount of \$29.18 and \$39.98 respectively, and the hydro bill amount is \$593.79. The landlord testified that the tenants' portions of those bills are \$11.68, \$16.00, and \$237.52.

Also provided are copies of 6 notices to end tenancy for unpaid rent or utilities, dated October 11, 2011, November 3, 2011, December 2, 2011, January 4, 2012, February 1, 2012 and February 6, 2012. The landlord testified that the tenants were served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 6, 2012 by personally handing it to one of the tenants as well as posting a copy to the door of the rental unit on the same day. The notice states that the tenants failed to pay rent in the amount of \$2,200.00 that was due on the 1st day of February, 2012 as well as \$278.78 for utilities following a written demand on February 1, 2012. Both pages of the 2-page form have been provided. The tenants have not paid any rent for the months of February or March, 2012, and have not paid the landlord any money since January 16, 2012.

The landlord requests an Order of Possession for unpaid rent and utilities, as well as a monetary order in the amount of \$2,478.78 for unpaid rent and utilities and recovery of

the filing fee for the previous Residential Tenancy Branch hearing, and recovery of the \$50.00 filing fee for the cost of this application.

Analysis

I have reviewed the evidence provided by the landlord, and find that the ledger created by the landlord for this hearing includes utilities and the Residential Tenancy Branch filing fee from a previous hearing. The amount on the ledger is the sum of unpaid rent and utilities and the filing fee combined, and is the amount written on the notice to end tenancy, which I find is not a correct amount. The *Residential Tenancy Act* permits a landlord to treat unpaid utilities as unpaid rent 30 days after a written demand for payment of the utilities is given to the tenants, and the filing fee is not to be included in the notice. I have no evidence before me of the dates that the landlord provided a demand for payment of the utility bills to the tenants, other than the landlord's testimony that copies of the utility bills were stapled to the notice to end tenancy, but it is not clear which bills were provided or when. I have attached a series of spreadsheets which represent the amounts of rent and utilities owed and paid according to the testimony and evidence of the landlord. The spreadsheets include one for rent only, another for utilities only, and one for combined rent and utilities. In the circumstances, I find that as of February 6, 2012, which is the date that the notice to end tenancy was issued, the tenants were in arrears for rent the sum of \$1,905.00 for rent and \$520.13 for utilities, for a total of \$2,425.13. In examining the ledger provided by the landlord, I find that the landlord has established a claim of \$ \$3,305.00 in unpaid rent up to and including March, 2012. The amount of utilities outstanding from the tenants totals \$520.13.

The *Residential Tenancy Act* states that once a tenant is served with a 10 Day Notice to end Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to dispute the notice or pay the rent in full. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must move out of the rental unit by that date. In this case, I find that the tenants were served with the notice as declared by the landlord, on February 6, 2012. The tenants did not pay the rent in full and did not dispute the notice, and therefore, the tenants are conclusively presumed to have accepted that the tenancy ended on February 17, 2012, and the landlord is entitled to an Order of Possession for unpaid rent. I am not satisfied that the landlord is entitled to an Order of Possession for unpaid utilities because I am not satisfied which bills were provided to the tenants with the notices to end tenancy or if the tenants were provided with 30 days to pay them as required under the *Act*. I do not have the authority to order the tenants to pay the \$50.00 filing fee for the cost of the previous application, however, since the landlord has been partially successful with

this claim, the landlord is entitled to recovery of the \$50.00 filing fee for the cost of this application.

The *Residential Tenancy Act* also states that where a tenant is ordered to pay an amount to the landlord, the amount may be deducted from any security deposit or pet damage deposit held in trust by the landlord, and I find it prudent to make that order. Therefore, the landlord may retain the security deposit and pet damage deposit totalling \$1,100.00 in partial satisfaction of the claim, and I order the tenants to pay to the landlord the difference in the amount of \$2,775.13.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenants.

I further order the landlord to keep the security deposit and pet damage deposit and I grant the landlord a monetary order for the difference, pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,775.13.

These orders are final and binding on the parties and may be enforced.

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 02, 2012.

Residential Tenancy Branch

RENT			
Date	Credit (Rent Due)	Debit (Payments)	Balance (Due to LL)
Oct 1/11	1,400.00		1,400.00

Oct 17/11		700.00	700.00
Oct 31/11		500.00	200.00
Nov 1/11	1,400.00		1,600.00
Nov 1/11		95.00	1,505.00
Nov 14/11		800.00	705.00
Dec 1/11	1,400.00		2,105.00
Dec 15/11		1,000.00	1,105.00
Dec 15/11		200.00	905.00
Dec 30/11		600.00	305.00
Jan 1/12	1,400.00		1,705.00
Jan 16/12		1,200.00	505.00
Feb 1/12	1,400.00		1,905.00
Mar 1/12	1,400.00		3,305.00

UTILITIES				
Date	Description	Credit (Utilities Due)	Debit (Payments)	Balance
Oct 1/11	BC Hydro	63.87		63.87
Oct 1/11	Fortis Gas	26.75		90.62
Nov 1/11	Fortis Gas	25.09		115.71
Dec 1/11	BC Hydro	166.23		281.94
Dec 1/11	Fortis Gas (Credit on Bill)		11.01	270.93
Feb 1/12	BC Hydro	237.52		508.45
Feb 1/12	Fortis Gas	11.68		520.13

RENT AND UTILITIES COMBINED				
Date	Description	Credit (Amount Owed)	Debit (Payments)	Balance Due to LL
Oct 1/11	Rent Due	1,400.00		1,400.00
Oct 1/11	BC Hydro	63.87		1,463.87
Oct 1/11	Fortis Gas	26.75		1,490.62
Oct 17/11	Payment		700.00	790.62
Oct 31/11	Payment		500.00	290.62
Nov 1/11	Rent Due	1,400.00		1,690.62
Nov 1/11	Fortis Gas	25.09		1,715.71
Nov 1/11	Payment		95.00	1,620.71
Nov 14/11	Payment		800.00	820.71
Dec 1/11	Rent Due	1,400.00		2,220.71
Dec 1/11	BC Hydro	166.23		2,386.94

Dec 1/11	Fortis Gas (Credit on Bill)		11.01	2,375.93
Dec 15/11	Payment		1,200.00	1,175.93
Dec 30/11	Payment		600.00	575.93
Jan 1/12	Rent Due	1,400.00		1,975.93
Jan 16/12	Payment		1,200.00	775.93
Feb 1/12	Rent Due	1,400.00		2,175.93
Feb 1/12	BC Hydro	237.52		2,413.45
Feb 1/12	Fortis Gas	11.68		2,425.13
Mar 1/12	Rent Due	1,400.00		3,825.13