



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, OPB, MND, 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 an Order of Possession for cause; for an Order of Possession for breach of an agreement; for a monetary order for damage to the unit, site or property; 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 tenant for the cost of this application.

The landlord attended the conference call hearing, provided evidence in advance of the hearing, 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 March 13, 2012 the tenant did not attend. The landlord provided evidence of having sent the documents including a receipt from Canada Post bearing that date and I am satisfied that the tenant has 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 an Order of Possession for cause?
- Is the landlord entitled to an Order of Possession for breach of an agreement?
- Is the landlord entitled to a monetary order for damage to the unit, site or property?
- 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 started on November 16, 2011 and expires on June 30, 2012. Rent in the amount of \$2,000.00 per month is payable in advance on the 1st day of each month. On November 24, 2011 the landlord collected a security deposit from the tenant in the amount of \$1,000.00 and no pet damage deposit was collected. A copy of the tenancy agreement was provided for this hearing.

The landlord further testified that the tenant failed to pay rent when it was due for the month of March, 2012 and the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The landlord hand-wrote several copies, and provided one for this hearing, testifying that the one served on the tenant contained the identical information. The notice is dated March 2, 2012 and states that the tenant failed to pay rent in the amount of \$2,000.00 that was due on March 1, 2012 and that the tenant failed to pay utilities in the amount of \$184.42 following written demand on March 1, 2012. The notice contains an expected date of vacancy of March 12, 2012, and the landlord testified that the tenant was served with a copy of the notice by leaving it personally with the tenant on March 2, 2012. A friend witnessed the landlord serve the notice, and the landlord has provided a Proof of Service document indicating the same information and containing the signatures of the landlord and the landlord's friend.

The landlord also testified that utilities were not included in the rent, but remained in the landlord's name and the tenant paid the landlord a deposit for utilities in the amount of \$1,000.00 at the outset of the tenancy. The utilities paid are City utilities which include electricity, water, sewer and garbage collection, as well as Fortis gas. The landlord used the \$1,000.00 deposit to pay the utilities for the rental unit, and testified that further bills owing now amount to \$683.42. The landlord provided copies of bills as follows, and claims those amounts, less the \$1,000.00 deposit paid by the tenant:

- City utilities covering the period November 18, 2011 to December 19, 2011 in the amount of \$335.30;
- City utilities covering the period December 19, 2011 to January 19, 2012 in the amount of \$284.12;
- City utilities covering the period January 19, 2012 to February 20, 2012 in the amount of \$244.57;
- Fortis gas covering the period October 26, 2011 to November 25, 2011 in the amount of \$151.19 for which the landlord claims a pro-rated amount of \$48.70 (\$4.87 per day for 10 days of the tenancy);
- Fortis gas covering the period November 25, 2011 to December 23, 2011 in the amount of \$200.83;
- Fortis gas covering the period December 23, 2011 to January 25, 2012 in the amount of \$299.55; and
- Fortis gas covering the period January 25, 2012 to February 23, 2012 in the amount of \$264.72.

In some cases, the bills have late payment charges and the amounts above represent the current charges only for the periods they cover. The landlord does not yet have the City utility bill which would cover the period commencing February 20, 2012 or the Fortis gas bill which would cover the period commencing February 23, 2012, but the landlord has calculated those bills to be \$359.98 for the City utilities to March 31, 2012 and Fortis gas in the amount of \$263.34 to March 31, 2012. A written calculation has been provided which shows that the landlord averaged the daily amount of consumption, or amount per day, and multiplied that average daily usage by the days remaining for the periods up to March 31, 2012. The landlord has also calculated an estimate of utilities to the end of the fixed term of the tenancy and claims an additional \$300.00 per month for April, May and June, 2012.

The landlord is unsure whether or not the tenant has vacated the rental unit and requests an Order of Possession. The tenant has not served the landlord with an application for dispute resolution disputing the notice and the rent and utilities remain outstanding. The landlord also asks for a monetary order in the amount of \$2,000.00 for unpaid rent for the month of March, 2012 and loss of revenue for the remainder of the term of the tenancy in the amount of \$2,000.00 per month. Also requested is a monetary order in the amount of \$2,206.74 for unpaid utilities.

The landlord also claims a monetary order in the amount of \$300.00 for carpet cleaning in the rental unit as specified in the tenancy agreement.

Analysis

Firstly, the *Residential Tenancy Act* states that a landlord may only collect a security deposit and a pet damage deposit from a tenant, and that those amounts may not exceed half a month's rent each. I find that the landlord did not have authority under the *Act* to collect a utility deposit from the tenant. However, I do find that the landlord has correctly applied the \$1,000.00 deposit appropriately to the payment of utilities.

The *Residential Tenancy Act* states that if a tenant fails to pay rent when it is due, the landlord may serve the tenant with a notice to end tenancy in the approved form. Once served, the tenant must pay the rent in full or dispute the notice within 5 days. 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, which must be no sooner than 10 days after service of the notice. In this case, I accept that the tenant was personally served with the notice on March 2, 2012. I further find that the notice is in the approved form. The tenant has not disputed the notice and has not paid the rent in full and therefore I find that the landlord is entitled to an Order of Possession for unpaid rent.

The landlord did not lead evidence with respect to cause or breach of an agreement, and I find that it is not necessary to provide such orders, and I dismiss the landlord's applications for an Order of Possession for cause and for an Order of Possession for breach of an agreement.

With respect to the landlord's application for a monetary order for damage to the unit, site or property, I find that the application is premature. The landlord is not certain if the tenant has moved, and the landlord has an obligation to provide the tenant with at least 2 opportunities to conduct a move-out condition inspection report and to assess any damages that may or may not exist. The landlord's application is hereby dismissed with leave to reapply.

With respect to the landlord's application for a monetary order for unpaid rent or utilities, I find that the landlord has established a claim for unpaid rent for the month of March, 2012 and loss of revenue for the month of April, 2012. The parties entered into a fixed term tenancy, and having found that the tenant failed to pay rent as required by that agreement, and given that the landlord's application was filed without delay on March 9, 2012, I find that the tenant is responsible for the payment of April's rent. However, with respect to the landlord's application for further rental amounts till the end of the fixed term, the landlord has a responsibility under the *Act* to mitigate any loss. The landlord has not satisfied me that attempts to re-rent for future months has been exhausted, or that the landlord won't be successful in re-renting the rental unit at the same amount of rent or more. Therefore, the landlord's application for unpaid rent for the months of May and June, 2012 is hereby dismissed without leave to reapply.

I have also reviewed the utility bills provided by the landlord and find that a miscalculation exists in the landlord's claim. The bill covering the period January 25, 2012 to February 23, 2012 is in the total sum of \$564.27 and contains a balance from the previous bill of \$299.55 and a late payment charge of \$4.49, for a total of \$304.04. I find that the amount of \$564.27 should be reduced by \$304.04 because the previous bill is accounted for, and the tenant ought not to be responsible for paying a late fee when the bills are paid by the landlord. I find that the tenant is responsible for the amount of \$260.23 for that gas bill, not \$264.72 as claimed by the landlord.

I have also calculated the bills provided by the landlord, and find that the actual bills total \$1,673.30. The landlord has collected a deposit from the tenant in the amount of \$1,000.00 which I find ought to be deducted from that amount, leaving a balance due to the landlord of \$673.30. The landlord has estimated the utilities to March 31, 2012 and provided a written calculation to explain the estimate and the amount claimed. I have compared that written calculation to the bills provided for previous months of the tenancy and I find that the calculation is reasonable, but the amount is hereby re-calculated and awarded at \$356.40 for the City utility and \$299.33 for Fortis gas to March 31, 2012. For clarity, the landlord's application for a monetary order for unpaid utilities is hereby awarded at \$1,329.03 (\$673.30 + \$356.40 + \$299.33). I find that the landlord has failed to establish further entitlement, and that using the same calculation to the end of the fixed term of the tenancy, is not justified in the circumstances given the time of year, and the landlord's application for future utilities to the end of the fixed term is hereby dismissed without leave to reapply.

The landlord currently holds a security deposit in the amount of \$1,000.00 and I find that the landlord is entitled to keep that amount to offset the amount due from the tenant. I

find that the landlord is entitled to a monetary order for the difference in the amount of \$4,329.03. Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In summary, I order as follows:

- I hereby grant an Order of Possession in favor of the landlord for unpaid rent on 2 days notice to the tenant ;
- The landlord's applications for an Order of Possession for cause and an Order of Possession for breach of an agreement are hereby dismissed without leave to reapply;
- The landlord's application for a monetary order for damage to the unit, site or property is hereby dismissed with leave to reapply;
- The landlord's application for a monetary order for unpaid rent is hereby granted in the amount of \$4,000.00 for the months of March and April, 2012;
- The landlord's application for a monetary order for future rent to the end of the fixed term tenancy is hereby dismissed without leave to reapply;
- The landlord's application for a monetary order for unpaid utilities is hereby granted in the amount of \$1,329.03;
- The landlord's application for a monetary order for future estimated utilities to the end of the fixed term of the tenancy is hereby dismissed without leave to reapply;
- The landlord's application for recovery of the \$100.00 filing fee for the cost of this application is hereby granted;
- The landlord's application for an order permitting the landlord to keep the security deposit in the amount of \$1,000.00 is hereby granted, and I order that amount be deducted from the monetary orders described above, for a total monetary order of \$4,429.03.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favor of the landlord on 2 days notice to the tenant. If the tenant fails to comply with the order, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

I further order the landlord to keep the security deposit in the amount of \$1,000.00 and I grant a monetary order in favor of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$4,429.03.

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: April 2, 2012.

Residential Tenancy Branch