



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, 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 a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; 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 and the tenant both attended the conference call hearing, gave affirmed testimony, and were given the opportunity to cross examine each other. The landlord also provided evidence in advance of the hearing, some of which was not provided within the time provided under the *Residential Tenancy Act* and Rules of Procedure. All testimony given and the evidence provided, with the exception of the late evidence provided by the landlord, 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 a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- 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

This month-to-month tenancy began on July 31, 2011 and the tenant still resides in the rental unit. Rent in the amount of \$550.00 per month is payable in advance on the 1st day of each month. The landlord testified that at the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$250.00 and no pet damage deposit was collected. However, the tenancy agreement states that the tenant

paid the landlord a security deposit in the amount of \$275.00. The landlord stated during the hearing that the landlord took the wrong file to a public telephone where the landlord dialled into the conference call hearing, and did not have the proper documents to refer to.

The landlord testified that the tenant failed to pay rent when it was due for the month of March, 2012. The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by leaving it personally with the tenant, and the landlord has provided a copy of the notice as well as a copy of a Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Proof of Service document is signed by the landlord and a witness and states that the tenant was personally served on March 2, 2012 at 5:50 p.m. The notice to end tenancy states that the tenant failed to pay rent in the amount of \$550.00 that was due on March 2, 2012 and that the tenant has failed to pay utilities in the amount of \$143.76 following a written demand on December 10, 2011. It is dated March 2, 2012 and contains an expected date of vacancy of March 12, 2012. The landlord testified that the tenant has not paid the outstanding rent, and rent for the month of April, 2012 has not been paid. The tenant is now in arrears of rent the sum of \$1,100.00, and the landlord claims that amount from the tenant in addition to unpaid utilities.

With respect to the unpaid utilities, the landlord testified that the tenancy agreement, a copy of which was provided for this hearing, states that the tenant is to pay shared utilities, and the landlord testified that there are 7 rental rooms within the complex that normally share the utilities on an equal basis, however one room has remained vacant until late March, 2012 and each tenant's portion has been one sixth. However, the landlord claims a higher amount of utilities from the tenant because the tenant keeps the window open causing the utility bills to be higher. When questioned about the amount claimed by the landlord, the landlord testified that using bills from the previous year, the landlord has calculated the over-usage by this tenant, and the landlord claims \$224.46 for the period of January 21, 2012 to March 20, 2012. Copies of the utility bills dated December 23, 2011 and January 23, 2012 were provided for this hearing, but copies of the previous year were not provided for this hearing.

The landlord also testified to damages within the rental unit, however was not permitted during the hearing to advance such claims as they are not relevant to the application before me.

The tenant testified that the landlord did serve the notice to end tenancy as declared by the landlord, and acknowledges owing \$550.00 for rent to the end of March, 2012. The tenant does not agree that if the tenant is required to move from the rental unit that the tenant should also be responsible for a month's rent for the month of April, 2012.

The tenant also acknowledges that utilities are outstanding, but disputes the amount claimed by the landlord. The tenant did not agree to pay more than one sixth, and stated that the utilities should be shared with all 7 tenants, not 6.

Analysis

The *Residential Tenancy Act* states that if a tenant does not pay rent when it is due, the landlord may issue a notice to end tenancy. Once served, 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, which must not be less than 10 days after the tenant has been served. In this case, I have reviewed the notice to end tenancy, and I find that it is in the approved form. The tenant has not disputed the notice, and therefore, the tenant is conclusively presumed to have accepted that the tenancy ended on March 12, 2012. The tenant has not moved from the rental unit, and therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent.

I also find that the landlord is entitled to a monetary order in the amount of \$1,100.00 for unpaid rent. The tenant entered into a tenancy agreement with the landlord agreeing to pay rent in the amount of \$550.00 per month. The tenant has not moved from the rental unit in accordance with the notice to end tenancy, and the landlord cannot re-rent the unit until the tenant has moved out. Further, if the tenant were to provide the landlord with written notice to end the tenancy, the notice would not take effect until the end of May, 2012. If the tenant had provided the landlord with notice to end the tenancy prior to the end of March, 2012, the notice would not take effect until the end of April, 2012, and therefore, I find that the landlord is entitled to a monetary order for unpaid rent for the months of March and April, 2012.

With respect to the landlord's application for a monetary order for unpaid utilities, I have reviewed the bills provided by the landlord, and I find that the landlord has applied for a monetary order for the same bill twice. The bill dated December 23, 2011 in the amount of \$412.11 was not paid by the landlord before the next bill was issued by BC Hydro. The next bill is dated January 23, 2012 contains the \$412.11 arrears as well as additional current charges and brings the amount owing to \$764.13. Therefore, I find that the outstanding utilities are \$764.13 and divided by 6 tenants equals \$127.35 for electrical service from September 22, 2011 to January 20, 2012.

The landlord also testified that a new bill dated March 21, 2012 has been received and the amount of the bill is \$691.41 which includes a late payment charge of \$6.18. I find that the tenant is not responsible for late charges for payment of utilities if the utilities

are in the landlord's name, and I note that the bills are all in the name of the landlord. Therefore, I find that the tenant owes one sixth of that bill after the late payment fee has been subtracted. The tenant's portion of that bill is \$114.20.

The landlord has not provided me with the bills from the previous year to show the calculation, and I find that the landlord has not established any entitlement to an amount for utilities over and above the amount agreed to by the parties when the tenancy agreement was signed. I find that dividing the bills by 6 tenants is fair in the circumstances, given that the 7th tenant in the complex moved into the complex in late March, 2012.

The landlord will have a monetary order in the total amount of \$241.55 for unpaid utilities.

With respect to the security deposit, the landlord stated during the hearing that the wrong file was before the landlord during the hearing, and I find that the landlord was remiss in quoting the amount of security deposit collected from the tenant. I find that the tenant paid the amount of security deposit indicated on the tenancy agreement of \$275.00 and not the \$250.00 as testified by the landlord. The *Residential Tenancy Act* states that where a tenant is ordered to pay an amount to a landlord, the amount may be deducted from any security deposit or pet damage deposit paid by the tenant, and I find it prudent to make such an order in this case. The landlord is hereby permitted to keep the security deposit of \$275.00 in partial satisfaction of the landlord's claim.

In summary, I find that the landlord is entitled to:

- an Order of Possession for unpaid rent;
- a monetary order in the amount of \$1,100.00 for unpaid rent;
- a monetary order in the amount of \$241.55 for unpaid utilities;
- an order permitting the landlord to keep all of the security deposit in the amount of \$275.00 which will be set off from the monetary orders.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

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 tenant. The tenant must be served with the Order of

Possession. If the tenant fails to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I further order the landlord to keep the security deposit in the amount of \$275.00 and I grant the landlord a monetary order for the difference in the amount of \$1,116.55.

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 04, 2012.

Residential Tenancy Branch