



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and utilities and for damage to the unit pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord testified that he handed the male tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on March 1, 2012. The female tenant (the tenant) said that the landlord handed her the 10 Day Notice on March 26, 2012. Although I am satisfied that the 10 Day Notice was received by the tenants, the parties disagreement on the date of the service of this document has no bearing on the landlord's application or my decision.

The landlord testified that he handed the tenants a copy of his dispute resolution hearing package on March 29, 2012 and sent another copy by registered mail on March 30, 2012. The tenant testified that the landlord handed the tenants a copy of his dispute resolution hearing package on April 4, 2012. I am satisfied that the landlord served his dispute resolution hearing package in accordance with the *Act*. The conflicting evidence on the date the tenants received the package is of no consequence to this application or my decision.

At the hearing, the tenant testified that the tenants moved from the rental premises on April 2, 2012. She said that the tenants have not returned their key to the rental premises as they are cleaning the premises and repairing damage before they turn possession over to the landlord. As the tenants have not yielded the requested vacant possession of the premises to the landlord, the landlord's agent (the agent) said that the landlord is still interested in obtaining an Order of Possession.

Since the landlord has not yet obtained possession of this rental unit and the tenants are attempting to repair damage arising out of this tenancy, the landlord withdrew his application for a monetary Order for damage. I allowed the landlord's withdrawal of his application for a monetary Order for damage with leave to reapply.

During the hearing, the tenant attempted to call a female witness. Although the Telus Operator for this teleconference hearing tried to contact this witness for 5 minutes, the tenant's witness was not available at the number provided by the tenant. We proceeded without testimony from this witness.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent and utilities? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord testified that this one-year fixed term tenancy commenced on April 1, 2010. The tenant testified that someone else was still living in the rental unit when the tenants tried to take occupancy on April 1, 2010, and, as a result, their tenancy did not commence until April 10, 2010. According to the terms of the residential tenancy agreement, a copy of which neither party submitted into written evidence, monthly rent is set at \$1,800.00, payable in advance on the first of the month. The tenant confirmed that the residential tenancy agreement required the tenants to pay 50% of the heat and hydro costs for this rental property.

The landlord testified that he continues to hold the tenants' \$900.00 security deposit paid on or about April 1, 2010. The tenant testified that the tenants paid one full month's security deposit, \$1,800.00, an amount still retained by the landlord for this tenancy. She also said that the tenants paid their rent in advance for the first month of this tenancy.

The landlord's original application for a monetary Order of \$12,838.00 included unpaid rent, unpaid utilities and an estimate for damage arising out of this tenancy.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from

a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

As the amount of the security deposit paid was an important issue for consideration in the landlord's application for a monetary Order, I asked the parties if they had a receipt for the security deposit payment. The landlord said that he had issued a receipt. I asked him to send a faxed copy of this receipt to the Residential Tenancy Branch (RTB) by 3:45 p.m. on the day of the hearing. Prior to 3:45 p.m. that day, the landlord sent a copy of this receipt and a copy of the \$1,800.00 rent payment he received for the tenants' first month of rent for this tenancy, both dated April 1, 2010. Based on a balance of probabilities, I find that the tenancy commenced on April 1, 2010, that rent was paid by the tenants for the entire month of April 2010, that rent was due on the first of each month, and that the landlord continues to hold the tenants' \$900.00 security deposit, one half of the monthly rent, in accordance with the *Act*.

Although I am satisfied that there is considerable unpaid rent and utilities owing from this tenancy, the amounts cited by both parties was somewhat unclear even after considerable sworn oral testimony by the landlord, his agent and the tenant.

In the 10 Day Notice, \$5,538.00 was identified as unpaid rent owing as of March 1, 2012. The landlord entered into written evidence a copy of what he claimed was the tenant's handwritten confirmation, initialled by her that as of February 16, 2012, \$3,738.00 was owed to the landlord for unpaid rent. The tenant testified that this piece of evidence was missing from the landlord's evidence package sent to her. When asked as to whether she recalled creating and initialling this February 16, 2012 note, she testified that she could not remember whether she had or had not created this note.

On a balance of probabilities, I find it more likely than not that the amount of rent owing as of February 16, 2012 was \$3,738.00. This figure is consistent with the \$5,538.00 amount of unpaid rent identified as owing as of March 1, 2012 in the 10 Day Notice as this figure results from the addition of \$1,800.00 in unpaid rent due on March 1, 2012 to the \$3,738.00 owing on February 16, 2012. On a balance of probabilities, I find it highly unlikely that the tenant would not be able to recall whether or not she created and initialled the February 16, 2012 note that set out the amount claimed as owing as of that date by the landlord. As the tenants have still not provided vacant possession to the landlords as of the date of this hearing, nor have they returned their keys to the landlord, I also find that the tenants are responsible for unpaid rent for all of April 2012. This adds another \$1,800.00 in unpaid rent to the amount shown in the 10 Day Notice, resulting in a monetary award of \$7,338.00 for unpaid rent.

I have also considered the landlord's claim for a monetary award for unpaid utilities and the copies of bills submitted into written evidence by the landlord to support this portion of the landlord's claim. The landlord's claim for unpaid utilities included one-half of a hydro bill of \$515.42 and one-half of a hydro bill of \$492.06 for the period from January 6, 2012 until March 6, 2012. This resulted in a total claim for unpaid hydro of \$503.74. The landlord's claim for the most recent two heating bills included one-half of the second last bill for \$217.29 and one-half of the most recent bill of \$269.62. These two bills resulted in the landlord's total claim for unpaid gas for heating of \$243.45.

The tenant testified that the landlord's claim for unpaid utilities should be reduced by the \$400.00 cash payment that she made to the landlord on March 4, 2012. She also testified that she should not have been responsible for one-half of the utilities as a result of additional tenants who moved into the premises after her tenancy commenced. She said that she should only be responsible for one-third of the cost of the utilities.

I find that the landlord has demonstrated his entitlement to a monetary award of \$503.74 for unpaid hydro bills and \$243.45 for unpaid heating bills from the tenant. I find no basis for the tenant's claim that she should only be responsible for one-third of the cost of utilities for this rental property. I make this finding as the tenant confirmed that her tenancy agreement required her to pay 50 % of the utilities for the rental property. The terms of her tenancy agreement were clear on this point and the tenant confirmed that there was no agreement between the parties to vary this provision of her tenancy agreement after additional tenants took up residency in this rental property.

I have also considered the tenant's sworn testimony that she gave \$1,800.00 in cash to the landlord when he attended her restaurant seeking unpaid rent on March 16, 2012. The tenant also testified that she paid the landlord \$400.00 in cash for utilities on March 4, 2012. She said that the landlord refused to give her a receipt for those cash payments. Although she said that there were witnesses to these cash payments to the landlord, she produced no witnesses at the hearing, did not enter any written evidence, and took some time identifying a date when she made these payments. The landlord gave sworn testimony that he received no such cash payments from the tenants for either their rent or their utilities in March 2012.

Given the amount of rent and utilities outstanding when the tenant claims to have made these cash payments, I find it highly unlikely that the tenant would have made large cash payments in the amounts described by her without obtaining a receipt from the landlord. I find on a balance of probabilities that it is more likely than not that the tenant did not make the cash payments she claimed to have made to the landlord in March

2012. For this reason, I make no adjustment to the amount of the landlord's entitlement to a monetary Order for the cash payments the tenant claimed to have made.

As discussed at the hearing, I provide the landlord with a 2 day Order of Possession.

Although the landlord's application does not seek to retain the tenants' security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit plus interest in partial satisfaction of the monetary award. No interest is payable over this period. Since the landlord has been successful in his application, I allow him to recover his filing fee for this application from the tenants.

Conclusion

I provide the landlord with a formal copy of an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour under the following terms which allows the landlord to recover unpaid rent, unpaid utilities and the landlord's filing fee for this application and to retain the tenants' security deposit.

Item	Amount
Rent Owing as of February 16, 2012	\$3,738.00
Unpaid Rent March 2012	1,800.00
Unpaid Rent April 2012	1,800.00
Unpaid Hydro	503.74
Unpaid Gas Bills for Heating	243.45
Less Security Deposit	-900.00
Recovery of Filing Fee for this application	100.00
Total Monetary Order	\$7,285.19

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlord's application for a monetary Order for damage to the rental premises arising out of this tenancy is withdrawn with leave to reapply.

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 23, 2012

Residential Tenancy Branch