



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 dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both landlords and one tenant participated in the teleconference hearing.

I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Background and Evidence

The tenancy began in April 2011. Rent in the amount of \$1250 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$625. The tenants failed to pay \$50 of the rent for March 2012 and paid no rent in the month of April 2012. On April 2, 2012 the landlord served the tenants with a notice to end tenancy for non-payment of rent and utilities. The tenants further failed to pay rent in the month of May 2012.

Landlord's Evidence

The landlord stated that there is a written tenancy agreement, and the tenants are responsible for the utilities for the house. The gas and hydro are in the landlord's name, but the bills go to the rental house and the tenants are supposed to pay the bills. The tenants stopped paying the gas and hydro bills, and the gas was cut off. The tenants owe \$691.73 for gas, and the landlord had to pay an additional \$140 to reconnect the gas. The landlord also had to pay \$498.33 for the hydro. There is a basement suite in the house, but nobody is living there right now.

The landlord has claimed unpaid rent for March and April 2012, as well as lost revenue for May 2012. The landlord has also claimed for the unpaid utilities. The landlord did not submit a copy of the tenancy agreement or the utilities bills as evidence to support their monetary claim.

Tenants' Response

The tenants are in the process of moving out and expect to be completely moved out of the rental unit in the next few days. The tenant acknowledged the outstanding rent for March and April 2012.

The tenant disputed the amounts claimed for the utilities, because there is a basement suite in the house, and the tenants should not be responsible for the utilities for the entire house. The tenant stated that they should only be responsible for two thirds of the utilities. The basement suite was heated, and the tenants had no access to the basement suite to adjust the heat.

Analysis

The landlord is entitled to an order of possession. The tenants were served with a notice to end tenancy for non-payment of rent and did not pay the outstanding rent. The tenants are therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice.

As for the monetary claim, I find that the landlord is entitled to \$1300 in unpaid rent for March and April 2012. I also grant the landlord \$625 in lost revenue for the first half of May 2012, as the tenants were still in the rental unit at the beginning of May and have not yet fully moved out. The landlord may still be able to re-rent the unit for the second half of May. The claim for lost revenue for the latter half of May 2012 is dismissed with leave to reapply.

The landlord's claim for utilities is also dismissed with leave to reapply. The tenant acknowledged that they owe for some utilities, but she disputed the amount owed and the landlord failed to provide sufficient evidence to confirm the amounts of utilities owed.

As the landlord's application was mostly successful, I find they are also entitled to recovery of their \$50 filing fee for the cost of their application.

Conclusion

I grant the landlord an order of possession effective two days from service. The tenants must be served with the order of possession. Should the tenants fail 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.

The landlord is entitled to \$1975. I order that the landlord retain the security deposit of \$625 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1350. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: May 2, 2012.

Residential Tenancy Branch