



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: CNR FF
For the landlord: OPR MNR MNDC FF

Introduction

This cross-application hearing dealt with an application for dispute resolution under the *Residential Tenancy Act* (the “*Act*”) by the landlord and the tenants. The tenants applied under the *Act* to cancel a notice to end tenancy for unpaid rent; and to recover the filing fee. The landlord applied under the *Act* for an order of possession for unpaid rent or utilities; a monetary order for unpaid rent or utilities and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee.

The landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

The landlord testified that the tenants were served the Notice of a Dispute Resolution Hearing on June 9, 2012 by registered mail. A copy of the registered mail receipt was provided in advance of the hearing as documentary evidence which shows the date mailed, the correct tenants and the correct rental unit address. The tenants did not attend the hearing. I find that the tenants were served with the Notice of a Dispute Resolution Hearing in accordance with the *Act*. The landlord testified that she received the tenants’ application in accordance with the *Act*.

Preliminary Matter

As the tenants did not attend the hearing, and were served with Notice of a Dispute Resolution Hearing in accordance with the *Act*, I dismiss the application of the tenants without leave to reapply. The hearing proceeded with on the application of the landlord.

Issue(s) to be Decided

- Should the landlord be granted an order of possession for unpaid rent or utilities?
- Should the landlord be granted a monetary order for unpaid rent or utilities; or money owed or compensation for damage or loss?
- Should the landlord recover the filing fee?

Background and Evidence

The landlord affirmed that a fixed term tenancy agreement began on June 1, 2011 and was to expire on May 31, 2012. Rent was due on the first day of each month in the amount of \$1,000.00. The tenants paid \$500.00 as a security deposit at the start of the tenancy. The landlord testified that the tenants agreed to pay 40% of the gas and hydro utilities as part of the tenancy agreement.

The landlord confirmed service of the 10 Day Notice for Unpaid Rent or Utilities (the "Notice") dated May 31, 2012, with an effective date of June 2012 by posting on the tenants' door on May 31, 2012. The Notice did not provide an effective day in June 2012. The landlord submitted a proof of service document as evidence which was signed by a third party as a witness prior to the hearing.

The landlord is seeking a monetary order of \$1,322.20 consisting of \$157.00 owing for May 2012 partial rent; \$1,000.00 owing for unpaid June 2012 rent; and \$165.20 for the tenants portion of the unpaid utilities. The landlord testified that they are seeking an order of possession as the tenants continue to occupy the rental unit.

The landlord provided copies of a gas and a hydro bill with the tenants' portion marked as 40% of the original amount as documentary evidence prior to the hearing. The original gas bills were dated May 8, 2012 for \$61.15 and June 5, 2012 for \$41.09. The original hydro bill was dated May 9, 2012 for \$310.76. The total portion owed by the tenants was 40% of these utility bills for a total of \$165.20.

The landlord provided copies of the correspondence; tenant application form; and a ledger as evidence for this proceeding. Only the relevant evidence was considered in this Decision.

Analysis

Section 68 of the *Act* states:

Director's orders: notice to end tenancy

- 68** (1) If a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that
- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
 - (b) in the circumstances, it is reasonable to amend the notice.
- (2) Without limiting section 62 (3) [*director's authority respecting dispute resolution proceedings*], the director may, in accordance with this Act,

- (a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy, or
- (b) set aside or amend a notice given under this Act that does not comply with the Act.

I, therefore, correct the omitted effective date on the Notice to June 13, 2012 in accordance with section 68 of the *Act*.

Order of Possession - I find that the tenants failed to pay the rent owed or dispute the Notice within 5 days after receiving the Notice, and that the tenants are conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the corrected effective date of the Notice. I, therefore, grant the landlord an order of possession.

Claim for unpaid rent– The landlord testified that May 2012 rent was not paid in full and that they have not received rent for June 2012. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. The tenants continue to occupy the rental unit. The landlord will not regain possession of the unit until after service of the order of possession and has not been paid rent for June 2012.

Claim of unpaid utilities – The landlord provided documentary evidence of gas and hydro bills that the tenants did not pay their 40% portion of, for a total of \$165.20 in unpaid utilities. I find the landlord has met the burden of proof and I award them a monetary claim of **\$1,322.20** consisting of June 2012 unpaid rent of \$1,000.00; \$157.00 partial rent owing for May 2012 rent; and \$165.20 for the tenants' 40% portion of the unpaid utilities.

The landlord has succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the landlord is entitled to a monetary order of \$1,372.20 and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants' security deposit plus interest as follows:

| | |
|--|-----------------|
| Portion of May 2012 rent owing | \$157.00 |
| June 2012 full rent owing | \$1,000.00 |
| Tenants' portion of the unpaid utilities | \$165.20 |
| Filing fee | \$50.00 |
| Less Security Deposit | (\$500.00) |
| TOTAL | \$872.20 |

Conclusion

I dismiss the application of the tenants without leave to reapply.

I find that the landlord has proven her claim and is, therefore, entitled to an order of possession effective **two days** after service upon the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

I find that the landlord has established a total monetary claim of \$1,372.20 as indicated above. I order that the landlord retain the deposit and interest of \$500.00 in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$872.20**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 20, 2012

Residential Tenancy Branch