



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, RP, OPR, MNR, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on May 7, 2012 for:

1. An Order that the Landlord make emergency repairs and other repairs to the unit – Section 32; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on May 8, 2012 for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67;
3. A Monetary Order for compensation – Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

During the Hearing, the Tenants stated that they were nearly moved out of the unit and did not dispute the Landlord’s request for an Order of Possession. The Tenants state that although a move-in inspection was conducted by the Tenants and the Landlord’s wife that no copy of the report was provided to the Tenants. The Tenants state that at the time of the inspection, several items were noted to require attention, such a faulty lighting in at least one bedroom and a fireplace that did not work as the remote was missing. The Tenants state that despite their requests that the Landlord make repairs to the lights and provide the remote for the fireplace all that the Landlord did was provide them with a bag of light bulbs on approximately March 15, 2012. Further, the Tenants state that when they inspected the unit, the stove was stainless steel but that when they moved into the unit, this stove had been replaced with an old stove.

The Tenants state that they have nearly finished their move out of the unit, that the tenancy has been a bad experience for them and that they only wish to move forward.

As the Tenants do not dispute the Order of Possession, I find that the Landlord is entitled to an Order of Possession. AS the tenancy is ending and noting that the Tenants have not made a claim for compensation, I dismiss the Tenants' application for repairs to the unit.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on February 10, 2012 for a fixed term to June 31, 2012. Rent in the amount of \$1,800.00 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 Tenant in the amount of \$900.00.

The Landlord states that the Tenants failed to pay any rent for May 2012. The Tenants state that they paid \$900.00 rent for May 2012.

The Landlord submitted a copy of the tenancy agreement and states that the Tenants have failed to pay utilities in the following amounts:

- \$250.00, for Hydro for February 10-29, 2012;
- \$400.00, for Hydro for March 1 to May 3, 2012;
- \$225.00, for an estimation of the Hydro for May 1 to May 30, 2012;
- 80% of \$69.20, for water.

The Landlord states that he has orally asked the Tenants on several occasions to pay the utilities and gave them photocopies of all the bills. The Tenants state that the Landlord only presented one hydro bill to them over the course of the tenancy and that they paid the amount of \$250.00 on that bill on March 12, 2012.

The Landlord states that a second 10 day notice for both unpaid rent and utilities (the "Second Notice") was served on the Tenants on May 3, 2012 by posting the notice on the door. The Tenants state that no second notice was received or posted on the door. The Landlord submitted as evidence a written proof of service indicating that this second notice was served and witnessed. The Tenants state that they did not receive any copies of this evidence. The Landlord states that all the evidence provided for this

Hearing was served on the Tenants by registered mail on May 15, 2012. It is noted that the evidence of service of the Notices were filed at the Residential Tenancy Branch between May 22 and May 28, 2012

Two Witnesses for the Landlord attended the Hearing: one stated that they witnessed the service of the Second Notice sometime in the afternoon, the second states that they witnessed the service in the late afternoon. The Witnesses were unable to explain the proof of service, signed by each of them, indicating that this second notice was served at 10:00 a.m.

Analysis

Although the Landlord and Tenant have presented conflicting evidence in relation to the payment of rent and utilities, I found the Tenant's evidence to be persuasive and find that the Tenant has substantiated on a balance of probabilities that half of May 2012 rent was paid and that the Tenant paid \$250.00 toward the utilities. Accordingly, I find that the Landlord is entitled to **\$900.00** in rent.

Given the tenancy agreement, noting the invoices submitted by the Landlord, noting that the Tenants did not dispute the proportion payment in relation to the water bill, I find that the Landlord has substantiated **\$501.26** for unpaid utilities calculated as follows:

- **\$445.90** (80% of Hydro bill of \$557.37 for March 1 to May 3, 2012) and
- **\$55.36** (80% of water bill of 69.20).

As the Landlord has been successful with his claim, I find that the Landlord is also entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$1,451.26**. Setting the security deposit plus interest of **\$900.00** off the Landlord's entitlement leaves **\$551.26** owed to the Landlord by the Tenant.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant 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.

I order that the Landlord retain the **deposit** and interest of \$900.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$551.26**. If necessary, 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 30, 2012.

Residential Tenancy Branch