

## **DECISION**

Dispute Codes      OPR, OPB, MNDC, MNSD, CNR, FF

### **Introduction**

There are applications filed by both parties. The Landlord has made an application seeking an order of possession for unpaid utilities and for breaching an agreement with the Landlord. The Landlord also seeks a monetary order for the unpaid utilities and to retain all or part of the security deposit. The Tenant has made an application to cancel the notice to end tenancy issued for unpaid utilities and recovery of the filing fee.

Both parties have attended the hearing by conference call and have given testimony. Both parties have acknowledged receiving the notice of hearing and evidence package submitted by the other party. As such, I find that each party has been properly served with the notice of hearing and evidence package submitted by the other as deemed under the Act.

### **Issue(s) to be Decided**

Is the Landlord entitled to an order of possession?  
Is the Landlord entitled to a monetary order?  
Is the Landlord entitled to retain the security deposit?  
Is the Tenant entitled to an order to cancel the notice to end tenancy?

### **Background and Evidence**

This Tenancy began on November 1, 2010 on a month to month basis as shown in the submitted copy of the signed tenancy agreement. The monthly rent is \$1,500.00 payable on the 1<sup>st</sup> of each month and a security deposit of \$750.00 was paid.

Both parties have acknowledged that the Tenants were served the 10 day notice to end tenancy for unpaid utilities (Furnace Oil and Hydro) by Canada Post Registered Mail sent on May 28, 2012.

Both parties agreed that the issue of dispute is the interpretation of the "additional information" portion of the section 3 "RENT" clause of the signed tenancy agreement. The Landlord claims that the monthly rent is \$1,500.00 which includes \$300.00 per

month for the utilities and that an annual adjustment would be paid at the end of each year. The Landlord states that each of the utility invoices were sent to the Tenants with a spreadsheet breakdown every 2 or 3 months. The Tenants dispute this stating that the first time that they received a spreadsheet with utility invoices was in August of 2011. The Landlord states that she did not submit copies of these spreadsheets. The Landlord relies on the submitted yearly spreadsheet and invoices submitted in the documentary evidence. The Tenants states that their understanding of the Tenancy Agreement was that the \$1,500.00 in monthly rent included \$300.00 for the utilities and that any "annual adjustments" were to be in the form of increased rent. The Landlord has pointed out that the selections for utilities (Electricity and Heat) were not selected as the normal form in including utilities with the rent.

The Landlord states that the rental house is solely occupied by the Tenants and that they are the sole beneficiaries of the utilities. The Landlord argues that based on the higher than average consumption of utilities during the winter months that the \$300.00 per month allotted from the rent would only cover 2/3<sup>rd</sup> of the total annual utility costs and that it would be unreasonable for them to have rented the house with all of the utilities being included with the rent. The Tenant, A.S. stated that this was "probably" a misunderstanding of the utility condition.

### Analysis

As both parties have confirmed that the Tenant was served with the 10 day notice to end tenancy for unpaid utilities, I am satisfied that the Tenant was properly served with the notice dated May 28, 2012 by Canada Post Registered Mail. The Landlord has also included the Canada Post Registered Mail Receipt and the online tracking information to confirm the delivery.

I prefer the evidence of the Landlord over that of the Tenant. A normal selection to have utilities inclusive of the rent would have the check marks selected for Electricity and Heat. The "additional information" clearly states that \$300.00 of the \$1,500.00 monthly rent would be applied to utilities every month. I do not find it reasonable that the Tenant's assertion that the "annual adjustment" for any difference would be in the form of a yearly rent increase. The Landlords did give written notification to the Tenants before serving a notice to end tenancy for unpaid utilities based upon the direct testimony of the Tenant, S.E. I find on a balance of probabilities based upon both the direct and documentary evidence submitted of both parties that the Landlord has established a claim for unpaid utilities. I agree that the Landlord's assertion that this form of utility payment plan is similar to the "Equal Payment Plan" established by BC Hydro. The 10 day notice to end tenancy dated May 28, 2012 is upheld. Based upon

the above facts, I find that the Landlord is entitled to an order of possession. The Tenant must be served with the order of possession. The order of possession shall be effective as shown on the notice to end tenancy for June 30, 2012. 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.

As for the monetary order, I find that the Landlord has established a claim for \$3,097.35 in unpaid utilities. I order that the Landlord retain the \$750.00 security deposit in partial satisfaction of this claim and I grant the Landlord a monetary order for the balance owing of \$2,347.35. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The Landlord is granted an order of possession effective June 30, 2012.  
The Landlord is granted a monetary order for \$2,347.35.  
The Landlord may retain the security deposit.

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: June 20, 2012.

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Residential Tenancy Branch