



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR, FF

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

Whether or not to issue an order of possession for unpaid rent.

Whether to allow a monetary claim in the amount of \$7286.46.

Background and Evidence

The applicant testified that:

- The tenants failed to pay the September 2012 rent, and therefore on September 5, 2012 he personally served the tenant's with a 10 day Notice to End Tenancy for nonpayment of rent.
- The tenants failed to comply with that 10 day notice, and have failed to pay any rent since that date.
- Therefore at this time the rent is outstanding for the months of September 2012, October 2012, and November 2012.
- The tenants also failed to pay their gas utility bills and their District of West Kelowna water utility bills.
- There is also a clause in the tenancy agreement requiring the tenants to have the carpets professionally cleaned when they vacate and he's concerned that they will not do so.

The applicant is therefore requesting an order of possession for as soon as possible, and a monetary order as follows:

Rent outstanding for September 2012	\$1625.00
Rent outstanding for November 2012	\$1625.00
Possible loss rental revenue for December 2012	\$1625.00
Gas utilities outstanding (estimated)	\$116.46
Water utilities outstanding (estimated)	\$270.00
Carpet cleaning	\$300.00
Filing fees	\$100.00
Total	\$7286.46

The tenant's testified that:

- They have not paid any rent for the months of September 2012 October 2012 or November 2012 as they were waiting for this hearing to find out what they should be doing.
- They did not pay the September 2012 rent; because when they informed the landlord the rent would be late he gave them a Notice to End Tenancy but told them that if they paid the rent by September 15, 2012, they could stay in the rental unit.
- The landlord later told them not even bother paying the rent because he applied for dispute resolution and he always won.
- They don't dispute the claim for gas or water utilities; however the landlord did not provide them with invoices for those utilities.
- They do plan on moving out of this rental unit once they find a place to move to.

In response to the tenant's testimony the landlord testified that:

- He never told the tenants that if they paid the rent by September 15, 2012 they could stay in the rental unit, and in fact he pointed out to them they must comply with the Notice to End Tenancy.
- He also never told the tenants not to pay the rent.

Analysis

It's my finding that the landlord does have the right to an order of possession, because there is a significant amount of rent outstanding, and the tenants admit that they have been served with a 10 day notice to end tenancy.

The tenants claim for the landlord told them not to bother paying the rent, however I find that very unlikely.

At this time there is rent outstanding totaling \$4875.00 and I therefore allow the landlord's claim for the outstanding rent.

I also allow the landlord's claim for outstanding gas utilities and water utilities as I find the landlord's estimates to be reasonable, based on the invoices that are available.

I dismiss with leave to reapply, the landlord's claim for carpet cleaning as this claim is premature, because the tenants have not yet vacated the rental unit and they may yet leave the carpets clean.

I also dismiss with leave to reapply, the claim for lost rental revenue for December 2012, because at this time we do not know whether or not the landlord will suffer any loss for the month of December 2012.

I will order recovery of the filing fee.

Therefore the total amount of the claim that I have allowed is as follows:

Rent outstanding for September 2012	\$1625.00
Rent outstanding for November 2012	\$1625.00
Gas utilities outstanding	\$116.46
Water utilities outstanding	\$270.00
Filing fees	\$100.00
Total	\$5361.46

Conclusion

I have issued an order of possession that's enforceable two days after service on the tenants.

I've issued a monetary order in the amount of \$5361.46.

As stated previously, the remainder of the monetary order is dismissed 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: November 14, 2012.

Residential Tenancy Branch