



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Landlord stated that he served the Application for Dispute Resolution, the Notice of Hearing, and several documents he wished to rely upon as evidence to the Tenant at the service address listed on the Application for Dispute Resolution, via registered mail, on January 31, 2013. The Tenant acknowledged receiving these documents and they were accepted as evidence for these proceedings.

The Landlord has included a claim for money owing on a boat that he sold to the Tenant. The parties were advised that I do not have jurisdiction over the sale of a boat and that this aspect of the dispute would not be considered at these proceedings.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent or Utilities, a monetary Order for money owed or compensation for damage or loss, a monetary Order for the cost of emergency repairs, and for authorization to reduce rent for repairs, services, or facilities agreed upon but not provided.

The Tenant stated that she believes she served the Application for Dispute Resolution and the Notice of Hearing to the Landlord, via regular mail, although she does not recall the date of service. The Landlord stated that he received an envelope from the Tenant, which is post marked January 25, 2013, but he only received the Notice to Hearing in the envelope. The Tenant stated that it is possible that she forgot to include the Application for Dispute Resolution in the envelope.

As the Tenant is not certain that she served the Landlord with the Application for Dispute Resolution and the Landlord is certain that it was not served, I find that I have insufficient evidence to conclude that the Landlord was properly served with the Tenant's Application for Dispute Resolution. I therefore dismiss the Tenant's Application for Dispute Resolution, with leave to reapply.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent and utilities; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began in October of 2011; that the Tenant is required to pay monthly rent of \$1,500.00 by the first day of each month; that the Tenant paid a security deposit of \$750.00; that the Tenant paid a pet damage deposit of \$750.00; and that the Tenant has not paid the rent for January or February of 2013.

The Landlord stated that he mailed a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of January 25, 2013, to the Tenant on January 15, 2013. The Tenant stated that she received this Notice to End Tenancy on January 21, 2013.

The Landlord and the Tenant agree that the Tenant was obligated to reimburse the Landlord for the cost of satellite internet service; that the bill for the service was in the Landlord's name; and that the Tenant was to reimburse the Landlord for the cost of the service. The Landlord submitted a copy of a bill for internet service, in the amount of \$882.29. The Landlord stated that in July of 2012 the Tenant gave him a cheque, in the amount of \$480.00, in partial payment of this bill. The Tenant stated that on July 20, 2012 she gave the Landlord a cheque, in the amount of \$548.73, in partial payment of this bill.

The Landlord and the Tenant agree that the Tenant was obligated to pay for the propane used during the tenancy and that she had made arrangements to have the bill for propane placed in her name. The Landlord submitted a copy of a propane bill in the Tenant's name, in the amount of \$540.99. The Tenant acknowledged that she is obligated to pay this bill; she stated that she has paid \$50.00 to the propane company; and that she is currently negotiating with the company in regards to paying the remainder of the bill. The Landlord stated that he believes he is ethically, but not legally, obligated to pay this bill and that he has not paid any portion of this bill.

The Landlord submitted a copy of a propane bill in the Landlord's name, in the amount of \$962.24. The bill shows the propane was delivered on December 04, 2012. The Landlord stated that this bill is in his name because he ordered the propane delivery to the rental unit. He stated that he ordered the propane because the fridge, stove, hot water, and heat all function with propane and he wanted propane at the rental unit. He acknowledged that the Tenant did not ask him to fill the propane tank on her behalf.

The Tenant stated that she did not want propane delivered to the rental unit because she believed one of the propane heaters was leaking and she was concerned for her safety. She stated that she has not been using the propane; that she is cooking on an open fire; and that she is showering elsewhere. The Landlord agreed that the Tenant expressed concern about a faulty propane heater.

Analysis

Based on the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$1,500.00 by the first day of each month and that the Tenant did not pay the rent that was due on January 01, 2013. As she is required to pay rent when it is due, pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,500.00 in outstanding rent to the Landlord.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. On the basis of the testimony of the Tenant I find that she received the Notice to End Tenancy, by regular mail, on January 21, 2013. I find that this Notice was served in accordance with section 88(c) of the *Act*.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant acknowledges receiving the Notice on January 21, 2013, I find that the earliest effective date of the Notice is January 31, 2013.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was January 31, 2013.

As the Tenant has not paid rent when it was due and the Tenant has been served with a Notice to End Tenancy for Unpaid Rent, I find that the Landlord has grounds to end the tenancy pursuant to section 46 of the *Act*. I therefore find that the Landlord is entitled to an Order of Possession.

As the Tenant did not vacate the rental unit by January 31, 2013, I find that she is obligated to pay rent, on a per diem basis, for the days she remains in possession of the rental unit. I therefore find that the Tenant must compensate the Landlord for the 19

days in February that she has remained in possession of the rental unit, at a daily rate of \$53.57, which equates to \$1,017.83. I am unable to award compensation for any other days in February, as I cannot be certain that the Tenant will remain in possession of the rental unit.

On the basis of the undisputed evidence, I find that the Tenant was obligated to compensate the Landlord for the satellite internet bill of \$882.29. On the basis of the testimony of the Tenant, I find that she still owes the Landlord \$333.56 for this bill and I find that she must pay this amount to the Landlord. I find that the Landlord has submitted insufficient evidence to show that the Tenant owes more than this amount. In reaching this conclusion I was heavily influenced by the absence of documentary evidence, such as the cancelled cheque, that corroborates the Landlord's testimony that the Tenant only paid \$480.00 or that refutes the Tenant's testimony that she paid \$548.73.

On the basis of the undisputed evidence, I find that the Tenant is obligated to pay for propane used during the tenancy; that she was responsible for paying the propane company for the propane she ordered; and that the Tenant currently owes \$490.99 to the propane company. As I have no evidence that the Tenant owes any portion of the \$540.99 to the Landlord and the Landlord has not paid any portion of this bill, I dismiss the Landlord's claim for compensation for any portion of the propane bill for \$540.99.

On the basis of the undisputed evidence, I find that the Landlord had propane delivered to the rental unit without the consent of the Tenant. In the absence of evidence that shows the Tenant used any of the propane that was delivered in December of 2012, I find that the Landlord has failed to establish that she is obligated to pay any portion of the propane bill for \$962.24.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I hereby grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$2,901.39, which is comprised of \$2,517.83 in unpaid rent, \$333.56 for internet service, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit and pet damage deposit, in the amount of \$1,500.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,401.39. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia 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: February 20, 2013

Residential Tenancy Branch

