



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNSD, FF

Introduction

This hearing concerns the landlord's application for an order of possession / a monetary order as compensation for unpaid rent or utilities / retention of the security deposit / and recovery of the filing fee.

The landlord and an agent assisting him attended and gave affirmed testimony. Despite service of the application for dispute resolution and notice of hearing (the "hearing package") by way of registered mail, the tenant did not appear. Evidence submitted by the landlord includes the Canada Post tracking number for the registered mail.

Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The tenant lives in the upper level of a house. The lower level of the house is rented to others. Pursuant to a written tenancy agreement, the tenancy began in October 2012. Monthly rent of \$1,400.00 is due and payable in advance on the first day of each month, and a security deposit of \$700.00 was collected. By way of an addendum to the tenancy agreement, the upper level tenant and the lower level tenant "share 60% and 40% [respectively] of the utility of whole house."

Three separate 10 day notices to end tenancy for unpaid rent or utilities were issued, as follows:

November 9, 2012	\$1,075.00 unpaid rent	
December 4, 2012	\$458.40 unpaid rent	
January 4, 2013	\$458.42 unpaid rent	\$66.00 unpaid utilities

The most recent of these notices by date of January 4, 2013 was served by way of delivery to the unit mailbox. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is January 18, 2013. Subsequently, the tenant has made no further payment toward rent or utilities and she continues to reside in the unit.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord and his agent, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent or utilities dated January 4, 2013. The tenant did not pay the overdue rent or utilities within 5 days of receiving the notice, and did not apply to dispute the notice. The tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. Accordingly, I find that the landlord has established entitlement to an **order of possession**.

As for the monetary order, I find that the landlord has established a claim of **\$3,374.42**:

\$458.42: *unpaid rent for January 2013;*

\$66.00: *unpaid utilities for January 2013*

\$1,400.00: *unpaid rent for February 2013*

\$1,400.00: *unpaid rent for March 2013*

\$50.00: *filing fee*

I order that the landlord retain the security deposit of **\$700.00**, and I grant the landlord a **monetary order** under section 67 of the Act for the balance owed of **\$2,674.42** (\$3,374.42 - \$700.00).

In relation to two other sums identified in the application as overdue for utilities (\$79.00 & \$356.00), section 46(6) of the Act provides as follows:

46(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

I note that while the gas (Fortis) and hydro bills are mailed to the unit address, both accounts remain in the landlord's name. In the absence of sufficient evidence that the landlord has notified the tenant and / or "issued a written demand for payment" of utilities in the separate amounts of \$79.00 and \$356.00, as above, these aspects of the application are hereby dismissed with leave to reapply.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenant. This order must be served on the tenant. 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.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$2,674.42**. Should it be necessary, this order may be served on the tenant, 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: March 21, 2013

Residential Tenancy Branch

