



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding QUAY PACIFIC PROPERTY MANAGEMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, and a monetary order for unpaid utilities.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid utilities?
Is the landlord entitled to a monetary order?
Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

The parties agreed that the tenant received by Canada post, a 10 day notice to end the tenancy for non-payment of utilities on February 5, 2013, in the amount of \$123.67. The notice informed the tenant that the notice would be cancelled if the utilities were paid within five days. The notice also explains the tenant had five days to dispute the notice.

The tenant acknowledged receiving a written demand for utilities on November 20, 2012 and that those utilities have not been paid as she has had difficulties with funding.

The tenant acknowledged that she did not file an application to dispute the notice.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The tenant acknowledged receiving a written demand for payment of utilities on November 20, 2012. The tenant failed to pay the utilities in the amount of \$123.67 and

was served with a 10 day notice to end tenancy, issued on February 1, 2013 and was received February 5, 2013. The tenant has not paid the outstanding utilities and did not apply to dispute the Notice and 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.

I find that the landlord is entitled to an order of possession effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord has established a total monetary claim for unpaid utilities in the amount of **\$123.67**.

The landlord seeks to recover a late payment fee for the utilities as per the terms of the tenancy agreement. However, under section 7 of the Residential Tenancy Regulations there is no provision which allows a landlord to claim a late payment fee for utilities. Late payment of utilities is deemed unpaid rent only for the purposes of ending a tenancy pursuant to section 45(6) of the Act. As a result, I find the landlords request to recover the \$25.00 late payment fee for the utilities is dismissed.

I find that the landlord has established a total monetary claim of **\$173.67** comprised of the above amount and the \$50.00 fee paid by the landlord for this application. I grant the landlord an order under section 67 for the Act.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Should the balance of the monetary order remain outstanding at the end of the tenancy the landlord is entitled to retain that portion from the security deposit pursuant to section 38(3)(a) of the Act.

Conclusion

The tenant failed to pay utilities and did not file to dispute the notice to end tenancy. The tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession. The landlord is granted a monetary order.

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 12, 2013

Residential Tenancy Branch

