



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNR, FF

For the landlord – OPR, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in repose to both parties' applications for dispute resolution. The tenant applied to cancel a Notice to End Tenancy and to recover the filing fee from the landlords for the cost of this application. The landlords applied for an Order of Possession for unpaid rent and utilities; for a Monetary Order for unpaid rent and utilities; for a Monetary Order for money owed or compensation for damage or loss under the Residential Tenancy Act (Act), regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The hearing went ahead as scheduled however the tenant failed to dial into the conference call during call. Therefore, no hearing took place regarding the tenant's application as the tenant has failed to present the merits of their application. The tenant's application is therefore dismissed without leave to reapply.

Service of the hearing documents, by the landlords to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on March 06, 2013 and in person on March 09, 2013. The tenant was also served in person on March 09, 2013. Mail receipt numbers were provided by the landlords in evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent and utilities?
- Is the landlord entitled to a monetary Order to recover unpaid rent and utilities?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss with regard to the unpaid security deposit?

Background and Evidence

This fixed term tenancy started on February 11, 2013. Rent for this unit is \$1,600.00 per month and is due on the 1st of each month. The rent does not include utilities and the landlords testify that there was a verbal agreement that the tenant would pay one third of the utilities. The tenant failed to pay the security deposit of \$800.00.

The landlord BL testifies that the tenant paid the first month's rent and the security deposit by cheque to the amount of \$1,828.00. However the tenant dated this cheque for February 10, 2012 and the landlords were unable to cash this cheque at the landlords' bank due to the date on the cheque. The landlords notified the tenant of this and the tenant promised to pay the amount again by e-mail transfer. The landlords have provided a copy of the cheque in evidence. The landlord testifies that the tenant failed to pay either the prorated rent of \$1,028.00 or the security deposit of \$800.00 as agreed.

The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on February 22, 2013. This was posted to the tenants' door and was deemed to have been served three days after posting. This Notice states that the tenant owes rent for February, 2013 plus the security deposit to the sum of \$1,828.00. The tenant had five days to either pay the

outstanding rent or apply for Dispute Resolution or the tenancy would end on March 03, 2013. The tenant did not pay the outstanding rent and although the tenant has disputed the Notice within five days the tenants has not appeared at the hearing today to present the merits of his application. Since that time the tenant has not paid rent for March, 2013 of \$1,600.00. The total amount of unpaid rent is now \$2,628.00 and the unpaid security deposit of \$800.00.

The landlord testifies that the tenant failed to pay their share of the utilities bills. The landlord testifies that the utilities are in the landlords name and this tenants share was one third while the upper tenants share was two thirds. The landlord has provided a copy of the BC Hydro bill in evidence and has calculated the tenant's prorated share of this bill from February 11, 2013 to February 21, 2013 to the amount of \$65.89. The landlord testifies that the tenant was given a copy of this utility bill. The landlord testifies that they have not yet received a utility bill for the next period but have obtained a BC Hydro estimate for the bill and have calculated the tenants share to be \$187.63. The landlord has calculated this from February 22, 2013 to March, 25, 2013 as a genuine estimate for when the tenant will vacate the rental unit. BC Hydro has calculated the bill based on previous usage. The landlord testifies that the tenant was sent a copy of this BC Hydro estimate and the landlords' calculations in the landlords' evidence package on March 06, 2013.

The landlords seek a Monetary Order to recover these amounts plus the \$50.00 filing fee from the tenant. The landlords also seek an Order of Possession to take effect as soon as possible.

The landlord has provided a copy of the tenancy agreement, a copy of the 10 Day Notice to End Tenancy, a copy of the cheque , a copy of the utility bill and the estimated usage of Hydro in documentary evidence.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord's agent.

Section 26 of the Act states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Consequently I find that the tenant has failed to pay rent for February, 2013 of \$1,028.00 and for March, 2013 of \$1,600.00. The landlord will receive a monetary award to the sum of **\$2,628.00** for unpaid rent pursuant to s.67 of the Act.

With regard to the landlords claim for Hydro; I find the tenant has been sent copies of the prorated Hydro bill for February, 2013. I therefore find the landlord has established a claim to recover the amount of **\$65.89** from the tenant. With regard to the landlords' estimated Hydro bill I find this is a genuine estimate provided by BC Hydro for the period of February 22 to March 25, 2013 as a date the landlords are hoping the tenant will have vacated the rental unit. I will therefore allow the landlords claim to recover the amount of **\$187.63** as the tenants may remain in residence past that date. If this occurs the landlord is entitled to establish any further amounts owed in Hydro usage by the tenant and may file a claim to recover that amount after providing the tenant with a copy of the Hydro bill and a written demand for payment within 30 days.

With regard to the landlords claim to recover the \$800.00 security deposit; A security deposit is an amount held in trust by a landlord until the end of the tenancy. If the tenant has failed to pay the security deposit at the start of the tenancy a landlord cannot recover this sum when the tenancy ends. Therefore the landlords' monetary claim to recover \$800.00 is dismissed without leave to reapply.

As the landlords have been partially successful in this matter, the landlords are also entitled to recover the **\$50.00** filing fee for this application pursuant to s. 72(1) of the *Act*. The landlords will receive a Monetary Order for the balance owing as follows:

Outstanding rent	\$2,628.00
Outstanding Hydro	\$253.52
Plus filing fee	\$50.00
Total amount due to the landlords	\$2,931.52

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The notice is deemed to have been received by the tenant on February 25, 2013 and the effective date of the notice is amended to March 07, 2013 pursuant to section 53 of the *Act*. I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the amended effective date of the Notice and grant the landlord an order of possession pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$2,931.52**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

The tenant's application is dismissed without 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: March 22, 2013

Residential Tenancy Branch

