



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's pet damage and security deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 11:13 a.m. in order to enable her to connect with this teleconference hearing scheduled for 11:00 a.m. The male landlord (the landlord) attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlords entered witnessed written evidence that the male landlord handed the tenant the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the 10 Day Notice) at approximately 8:40 on February 22, 2013. The landlord testified that the landlords sent the tenant a copy of the landlords' dispute resolution hearing package by registered mail on March 11, 2013. I am satisfied that the landlords served the tenant with the above documents in accordance with the *Act*.

At the hearing, the landlord testified that the tenant has not paid anything further towards this tenancy since the issuance of the 10 Day Notice. The landlord asked for some additional compensation for the tenant's failure to pay rent for April 2013. I agreed to consider a monetary award for unpaid rent for part of April 2013, as part of the landlords' application for dispute resolution.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent and utilities? Are the landlords entitled to a monetary award for unpaid rent and utilities? Are the

landlords entitled to retain all or a portion of the tenant's deposits in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for their application from the tenant?

Background and Evidence

This periodic tenancy commenced on April 27, 2012. Monthly rent is set at \$800.00, payable in advance on the first of each month. The landlord testified that the tenant is responsible for 40% of the utilities in this two unit rental property. The landlords continue to hold the tenant's \$400.00 security deposit and \$100.00 pet damage deposit, both paid on April 27, 2012.

The landlords entered into written evidence a copy of the 10 Day Notice, which identified \$200.00 in unpaid rent owing as of February 1, 2013 and \$309.59 in utilities (hydro and heat) owing as of January 16, 2013. The landlords also entered into written evidence copies of a series of hydro and gas bills that extended to January 23, 2013. The landlord testified that the tenant has not paid anything towards either the rent or the utilities since the landlords handed her the 10 Day Notice. He also testified that the tenant has commenced moving some of her belongings from the rental unit, but has not removed all of her belongings, nor has she yielded vacant possession and the keys to the landlords.

Analysis

The tenant failed to pay the amount identified as owing in the 10 Day Notice within five days of receiving that Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by March 5, 2013. As that has not occurred, I find that the landlords are entitled to a 2 day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

Based on the landlords' undisputed written evidence and the sworn testimony of the landlord, I find that the landlords are entitled to a monetary award of \$200.00 in unpaid rent for February 2013, \$800.00 for March 2013, and \$400.00 for April 2013, representing one-half of the rent for April 2013. After reviewing the landlords' bills for hydro and utilities, I find that the landlords have submitted sufficient evidence to demonstrate their entitlement to a monetary award of \$309.59, the amount identified in both their 10 Day Notice and their application for dispute resolution.

I allow the landlords to retain the tenant's deposits plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. As the landlords have been successful in their application, I allow them to recover their filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlords' favour under the following terms, which allows the landlords to recover unpaid rent and utilities, and their filing fee, and to retain the tenant's deposits:

Item	Amount
Unpaid February 2013 Rent	\$200.00
Unpaid March 2013 Rent	800.00
Allowance for Unpaid April 2013 Rent	400.00
Unpaid Utilities	309.59
Less Pet Damage & Security Deposits	-500.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1,259.59

The landlords are provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: April 03, 2013

Residential Tenancy Branch