



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with a landlord's request for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and utilities. The tenant did not appear at the hearing. The person appearing with the landlord testified that he personally served the tenant with the hearing documents at the rental unit on May 18, 2013. I was satisfied the tenant was sufficiently served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

At the outset of the hearing the landlord confirmed that the tenant has since vacated the rental unit. As an Order of Possession is no longer required I do not provide one with this decision.

The landlord indicated that since filing this Application he has incurred additional damages and loss but that he has not had an opportunity to amend the Application or provide supporting evidence. I informed the landlord of his right to make another Application for damages or loss suffered since filing this Application. Accordingly, this decision deals with the items identified on the Application filed September 16, 2013.

Issue(s) to be Decided

Has the landlord established an entitlement to compensation for unpaid rent and utilities, as claimed?

Background and Evidence

The parties executed a written tenancy agreement indicating the tenancy commenced March 1, 2013 for a monthly rent of \$3,400.00 due on the 1st day of every month for a fixed term set to expire June 30, 2014. The tenant paid a security deposit of \$1,700.00. Among other things, the tenant was responsible for paying for hydro and gas.

The tenant failed to pay rent for the month of March, April and May 2013 and on May 10, 2013 the tenant was personally served with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice). The Notice indicated that \$10,200.00 was not paid as of March 1, April 1 and May 1, 2013 and had a stated effective date of May 22, 2013. The tenant vacated the property on or about May 22, 2013.

The landlord applied to recover unpaid and/or loss for the months of March 2013 through July 2013. The landlord confirmed that the rental unit has not yet been re-rented and attributed this to the condition the rental unit was left by the tenant, the tenant's breach of the tenancy agreement and the tenant's insufficient notice to end the tenancy.

The landlord applied to recover utilities estimated to be \$650.00 at the time of filing. Since then the landlord has received utilities bills from BC Hydro for \$594.05 and Fortis for \$51.91 and \$42.67. The BC Hydro bill includes charges for service incurred before March 1, 2013. The landlord submitted the tenant is responsible for hydro incurred prior to March 1, 2013 because the previous tenant was the tenant's wife and the tenant had agreed to take over her tenancy.

The landlord also applied for unspecified costs of \$350.00.

Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. When a tenant fails to pay rent when due the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent.

Under section 46(5) of the Act, If a tenant does not pay the outstanding rent or file to dispute the 10 Day Notice within five days of receiving the 10 Day Notice the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

In this case, I am satisfied the tenancy ended pursuant to the 10 Day Notice and/or upon the tenant vacating the rental unit on May 22, 2013 and the tenant did not pay any rent during the tenancy.

Based upon the undisputed terms of tenancy I find the landlord entitled to recover unpaid rent for the months of March 2013 through May 2013 in the amount of \$10,200.00 [\$3,400.00 x 3].

I further award the landlord loss of rent for the month of June 2013 as I am satisfied the tenant violated the tenancy agreement and the Act by ending the tenancy by way of a breach of the agreement and that the rental unit remains vacant due to the tenant's breach. Therefore, the landlord is awarded compensation of \$3,400.00 for the month of June 2013.

I make no award for loss of rent for the month of July 2013 as anticipated losses are not recoverable. The landlord is at liberty to pursue loss of rent for subsequent months by filing a subsequent Application for Dispute Resolution if such losses are incurred despite the landlord's efforts to minimize losses.

With respect to utilities, I accept the evidence before me that the tenant is responsible for paying for hydro and gas. I do, however, reject the landlord's position that the tenant is responsible for utilities incurred prior to March 1, 2013 as the executed tenancy agreement clearly indicates the tenant's obligations commenced March 1, 2013. Any other discussions prior to the formation of the tenancy agreement that do not form part of the tenancy agreement are not enforceable. Therefore, I decrease the BC Hydro claim to reflect charges incurred during the tenancy, as follows:

Electric charges for February 20 – April 18, 2013 (57 days)	\$ 283.17
Less: pro-ration for February 20 – 28, 2013 (8 days)	<u>(39.75)</u>
Hydro owed by tenant to April 18, 2013	\$ 243.42

I am satisfied the Fortis bills, dated May 11, 2013 and June 12, 2013 reflect charges incurred during the period of March 20, 2013 through May 21, 2013 and a period of time in which the tenancy was in effect. Therefore, I grant the landlord's claims for the Fortis bills of \$51.91 and \$42.67, for a total of \$94.58.

I make no award for the other "costs" claimed by the landlord with this Application as the landlord did not indicate the nature of the claim or an entitlement to recover such unspecified costs under the Act. However, I find a large portion of the landlord's claims do have merit and I award the landlord the \$100.00 filing fee paid for this Application.

As the landlord did not request authority to retain the security deposit, it remains to be administered in accordance with section 38 of the Act.

In light of the above, I provide the landlord with a Monetary Order calculated as follows:

Unpaid Rent: March – May 2013	\$ 10,200.00
Loss of Rent: June 2013	3,400.00
BC Hydro: for service to April 18, 2013	243.42
Fortis: for service to May 21, 2013	94.58
Filing fee	<u>100.00</u>
Monetary Order	\$ 14,038.00

The Monetary Order must be served upon the tenant and may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord has been provided a Monetary Order in the amount of \$14,038.00 to serve and enforce as necessary.

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: June 12, 2013

Residential Tenancy Branch

