



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding All In One Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MDR, CNR, FF

Introduction

This hearing dealt with two related applications. The landlord has applied for an order of possession and a monetary order. The tenant has applied for an order setting aside a 10 Day Notice to Non-Payment of Rent or Utilities. Both parties appeared and had an opportunity to be heard.

At the beginning of the hearing the tenant advised that he had not served his application for dispute resolution on the landlord. Accordingly, that application was dismissed and the hearing proceeded on the landlord's application only.

The tenant also advised that his first name had been misspelled on the landlord's application for dispute resolution. His correct name is reflected on the decision and on the orders.

Issue(s) to be Decided

- Is the landlord entitled to an order of possession and, if so, on what terms?
- Is the landlord entitled to a monetary order and, if so, in what amount?

Background and Evidence

This month-to-month tenancy commenced in 2002 or 2003. A security deposit was paid but in 2005 it was applied to a debt owed to the landlord by the tenant. As of December 1, 2012, the monthly rent was \$1180.00. It is due on the first day of the month. The tenant is also responsible for a portion of the utilities.

There is no written tenancy agreement. The tenant pays his rent in cash. Although the *Residential Tenancy Act* requires landlords to provide tenants with a receipt for every rent payment made in cash, no receipts were ever provided.

On April 15, 2013, the landlord issued and posted a 10 Day Notice to End Tenancy for Non-Payment of Rent and Utilities. The tenant acknowledged receipt of the notice.

The tenant testified that in December his roommate moved out making it very difficult for him to pay the full amount of the rent. He approached the landlord and they agreed that the tenant would pay \$850.00. The tenant says he asked the landlord to put this agreement in writing but the landlord refused. Part of the agreement was that the tenant would be gone by spring. The tenant says he has had difficulty finding alternate accommodation.

The landlord's agent said the landlord only agreed to forego a rent increase; not to reduce the rent, and in any event, the tenant did not move out as agreed.

The landlord's record is that the tenant has made the following payments since January 1, 2013:

January 5	\$400.00
January 8	\$ 70.00
February 1	\$100.00
February 7	\$745.00
March 5	\$450.00
April 3	\$150.00

The tenant's testimony is that he has made the following payments:

January 5	\$600.00
January 8	\$270.00
February 7	\$745.00
March	Couldn't remember
April 3	\$150.00

The landlord claimed the following amounts for gas:

Nov 13/12 to Dec 11/12	\$33.24
Dec 11/12 to Jan 15/13	\$64.66
Jan 15/13 to Feb 20/13	\$56.53
Feb 20/13 to Mar 20/13	\$52.48
Mar 20/13 to Apr 19/13	\$17.53
TOTAL	\$224.44

and for hydro:

Nov 14/12 to Jan 14/13	\$34.04
Jan 15/13 to Mar 13/13	\$33.45
TOTAL	\$67.49

Although the landlord did not file copies of the invoices for gas and hydro in support of his claim for unpaid utilities the tenant acknowledged that the amounts claimed were consistent with the amounts he has paid in the past.

Analysis

Based on the evidence before me I find that the tenant was served with a 10 Day Notice to End Tenancy for Non-Payment of Rent or Utilities. The tenant has not paid the outstanding rent and did not pursue his application to dispute the notice so he is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Accordingly, I find that the landlord is entitled to an order of possession effective two days after service on the tenant.

As to whether there was any agreement to reduce the rent starting January 1 the evidence before me is the direct evidence of the tenant and the hearsay evidence provided by the landlord's agent. I do not have the sworn oral testimony of the landlord, or even a written statement from the landlord. Direct evidence is always more persuasive than hearsay evidence. The tenant appeared to give his evidence in a straight forward manner and I have no reason not to believe his version of events. Accordingly, I find that effective January 1, 2013, the rent was reduced to \$850.00 per month.

A similar analysis applies to the conflicting evidence regarding the payments made by the tenant in January and February. If the landlord had provided receipts of all payments received those would have been determinative. As it is, there is only the direct evidence of the tenant and the hearsay evidence of the landlord's agent, who was not hired until after these particular rent payments had been made. Accordingly, whenever there is conflict in the evidence on payments made, I accept the tenant's evidence.

I find that the landlord has established a total monetary claim of \$2376.89 calculated as follows:

Arrears of rent for January to May (\$850.00 X 5 less payments of \$600.00, \$270.00, \$745.00, \$450.00 and \$150.00)	\$2035.00
Unpaid utilities of	\$291.89
Filing Fee paid by the landlord	\$50.00
TOTAL	\$2376.89

and I award the landlord a monetary order in this amount.

Conclusion

- An order of possession effective two days after service on the tenant has been granted. If necessary, this order may be filed in the Supreme Court of British Columbia and enforced as an order of that court.
- A monetary order in favour of the landlord has been made. If necessary, this order may be 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: June 06, 2013

Residential Tenancy Branch