



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNDC, MNSD, FF

Introduction:

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent and/or Utilities, a monetary Order for unpaid rent and/or utilities, a monetary Order for money owed or compensation for damage or loss, and to recover the fee for filing an Application for Dispute Resolution.

The Landlord stated that the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were sent to each Tenant at the rental unit, via registered mail, on June 16, 2013. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however none of the Tenants appeared at the hearing.

Issue(s) to be Decided:

Is the Landlord entitled to an Order of Possession and to a monetary Order for unpaid rent/utilities?

Background and Evidence:

The Landlord stated that he entered into a tenancy agreement with all three Tenants; that all three Tenants are named on the tenancy agreement; that two of the Tenants signed the tenancy agreement; that this tenancy began on November 01, 2012; and that the Tenants are required to pay monthly rent of \$1,000.00 by the first day of each month. The Landlord submitted a copy of the tenancy agreement which corroborates this testimony.

The Landlord stated that the Tenant had a \$260.00 overpayment from May of 2013, which was applied to rent owing for June of 2013; that the Tenant paid \$175.00 in rent on June 07, 2013; and that the Tenant still owes \$565.00 in rent for June of 2013. The Landlord stated that no rent was paid for July of 2013.

The Landlord stated that on June 07, 2013 he personally served a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities to the Tenant with the initials "J.L.". The Notice declared that the Tenant owes rent of \$740.00 and utilities of \$100.00. The effective date of the Notice was June 17, 2013.

The Landlord stated that the Tenants are obligated to pay 50% of the hydro costs for the residential complex. He stated that the Tenants agreed to pay \$100.00 per month towards the hydro costs and that the hydro bills will be reconciled periodically, at which time any money owing by the Tenants would be collected by the Landlord or any overpayment would be refunded to the Tenants.

The Landlord stated that he has not yet reconciled the hydro bills for this tenancy; that he has not yet received the hydro bill for June and July of 2013; and that he has not yet provided the Tenants with copies of any hydro bills. Copies of the relevant hydro bills were not submitted in evidence. He stated that the Tenants have not paid the \$100.00 in utilities for June or July of 2013.

Analysis

On the basis of the undisputed evidence, I find that the Tenants entered into a tenancy agreement with the Landlord that required the Tenants to pay monthly rent of \$1,000.00 by the first day of each month and that the Tenants still owe \$565.00 in rent for June of 2013. As the Tenants are required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenants must pay \$565.00 in outstanding rent to the Landlord for June of 2013.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. In the absence of evidence to the contrary, I find that on June 07, 2013 one of the Tenants was personally served with a Ten Day Notice to End Tenancy that directed the Tenant to vacate the rental unit by June 17, 2013, pursuant to section 46 of the *Act*.

Section 46 of the *Act* stipulates that a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice to End Tenancy if the tenant does not either pay the outstanding rent or file an Application for Dispute Resolution to dispute the Notice within five days of receiving the Notice to End Tenancy. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenants accepted that the tenancy ended on June 17, 2013. On this basis I find that the Landlord is entitled to an Order of Possession.

As the Tenants did not vacate the rental unit on June 17, 2013, I find that they are obligated to pay rent, on a per diem basis, for the days they remain in possession of the rental unit. As they have already been ordered to pay rent for the period between June 18, 2013 and June 30, 2013, I find that the Landlord has been fully compensated for that period. I also find that the Tenants must compensate the Landlord for the 11 days in July that they remained in possession of the rental unit, at a daily rate of \$33.33, which equates to \$366.63.

I find that the Tenants fundamentally breached the tenancy agreement when they did not pay rent when it was due. I find that the Tenants fundamentally breached section 46(5) of the *Act* when they did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that their continued occupancy of the rental unit makes it difficult, if not impossible, for the Landlord to find new tenants for the remainder of July. I therefore find that the Tenants must compensate the Landlord for the loss of revenue the Landlord is likely to experience between July 12, 2013 and July 31, 2012, which is \$633.37.

The Landlord retains the right to file another claim for lost revenue for any period after July 31, 2013 if the Landlord experiences a loss of revenue as a result of the actions of the Tenants.

On the basis of the undisputed evidence, I find that the Tenants are obligated to pay 50% of the hydro costs incurred at this residential complex during their tenancy; that they agreed to pay \$100.00 per month towards those costs; and that they have already paid \$700.00 in monthly payments towards those costs. As this tenancy is ending and the Landlord has not yet reconciled the hydro costs, I find that I have insufficient evidence to conclude that the Tenants owe money for hydro.

In reaching this conclusion I was heavily influenced by the fact that the relevant hydro bills were not submitted in evidence. I find it entirely possible that once the hydro bills are reconciled with the \$700.00 in payments that were made, the Tenants may owe less than \$200.00. I therefore find that this claim is premature and I dismiss the claim for hydro costs with leave to reapply once the Landlord has received all the relevant hydro bills.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenants for the cost of this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenants. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$1,615.00, which is comprised of \$1,565.00 in unpaid rent/lost revenue and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution, and I grant a monetary Order for this amount. In the event the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia 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: July 12, 2013

Residential Tenancy Branch