



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNR, MNSD, FF

Introduction

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

- an Order of Possession for landlord's use of the property pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:43 p.m. in order to enable him to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that she left the 2 Month Notice for Landlord's Use of Property (the 2 Month Notice) in the tenant's mail slot on May 28, 2013. She said that she was certain that the tenant received the Notice because she discussed it with him after he received it. She testified that she handed the tenant a copy of her dispute resolution hearing package on July 18, 2013 and handed him a copy of her written evidence package on July 30, 2013. I am satisfied that the landlord served the above documents to the tenant in accordance with the *Act*.

The landlord testified that she believes that the tenant is no longer living at this rental unit as he cancelled his gas account on August 6, 2013, and disconnected the hydro on August 9, 2013. However, he has left some of his large items including a piano and a large bookcase in the rental unit. Although he may have abandoned the rental unit, the landlord requested an Order of Possession in case that has not occurred.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for landlord's use of the property? Is the landlord entitled to a monetary award for unpaid rent and utilities? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of

the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy commenced on January 15, 2012. Monthly rent is \$2,100.00, plus utilities. The landlord continues to hold the tenant's \$1,050.00 security deposit.

The landlord issued her 2 Month Notice because she is planning to move family members into this location once she demolishes the existing structure and constructs a new residence. She said that the tenant has not paid his June 2013 rent and has failed to pay utilities for some time. She testified that she has not claimed for July 2013 rent, as she recognizes that the tenant is entitled to stay in the rental unit rent-free during the last month of his tenancy after having received her 2 Month Notice.

The landlord's application for a monetary award of \$3,023.54 included unpaid rent of \$2,100.00 owing for June 2013 and a total of \$923.54 in unpaid utilities that remain owing. She submitted copies of utility bills and receipts to support her claim for unpaid utilities. Since applying for dispute resolution, the landlord testified that she has received and paid for a further utility bill in the amount of \$373.77 for the period from April 2013 until June 30, 2013. She asked for an increase in the amount of the monetary award she was seeking to \$3,397.31, to reflect this additional utility bill.

Under these circumstances, I agreed to increase the amount of the monetary award she was seeking in her application to \$3,397.31. Although she said that there is still another utility bill that will be sent to her for the last portion of this tenancy, she does not know the amount of this bill. I advised that she is at liberty to apply for a monetary award for this remaining utility bill once she receives and pays for it.

Analysis

The tenant has not made application pursuant to section 49(8) of the *Act* within fifteen days of receiving the 2 Month Notice. In accordance with section 49(9) of the *Act*, the tenant's failure to take this action within fifteen days led to the end of his tenancy on August 1, 2013 and required him to vacate the rental premises by that date. As that may not have occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord 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 landlord may enforce this Order in the Supreme Court of British Columbia.

Based on the undisputed evidence submitted by the landlord, I find that the landlord is entitled to a monetary award of \$2,100.00 for unpaid rent owing from June 2013. I also

find that the landlord is entitled to recover \$923.54 in unpaid utilities owing prior to April 2013, and \$373.77 in unpaid utilities covering the period ending on June 30, 2013.

I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. As the landlord has been successful in her application, I allow the landlord to recover her \$50.00 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 landlord's favour under the following terms, which allows the landlord to recover unpaid rent and utilities and the filing fee for her application and to retain the tenant's security deposit:

Item	Amount
Unpaid June 2013 Rent	\$2,100.00
Unpaid Utilities less tenant's payments for Utilities	923.54
Unpaid Utilities from April 2013 – June 30, 2013	373.77
Less Security Deposit	-1,050.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$2,397.31

\The landlord is 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: August 22, 2013

Residential Tenancy Branch

