



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 353178 B.C. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of possession for unpaid rent, a monetary Order for unpaid rent and utilities, compensation for damage or loss under the Act, to retain the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on August 13, 2013 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail at the address noted on the Application. A Canada Post tracking number and receipt was provided as evidence of service. The mail was returned to the landlord, marked by Canada Post as unclaimed.

A failure to claim registered mail does not allow a party to avoid service. Therefore, I find these documents are deemed to have been served in accordance with section 89 and 90 of the Act, on the 5th day after mailing. The tenant did not appear at the hearing.

Preliminary Matters

The landlord submitted an 11 page evidence package to the Residential Tenancy Branch 4 days prior to the hearing. That evidence was personally given to the tenant by the landlord, on the same date. As the tenant was served with notice of this hearing and refused to claim the registered mail, the evidence was referenced. The tenant was at liberty to accept the registered mail and attend the hearing; she did not.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent and utilities?

Is the landlord entitled to a monetary Order for unpaid rent and utilities?

Is the landlord entitled to compensation for damage or loss under the Act?

May the landlord retain the security deposit in partial satisfaction of the claim?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on June 1, 2012; rent is \$720.00 per month, due on or before the 1st day of each month. A security deposit in the sum of \$360.00 was paid. A copy of the tenancy agreement was supplied as evidence.

Clause 7 of the tenancy agreement requires payment of a late fee in the sum of \$5.00 for each day late, to a maximum of \$25.00. Clause 7 also requires the payment of a \$25.00 NSF fee.

On May 29, 2013 the tenant signed an application for tenancy which indicated she must pay the hydro. The tenancy agreement indicated that heat was supplied; heat is run by natural gas. The tenant paid for electricity.

The landlord has made the following claim:

Unpaid July, August, September 2013 rent	\$2,160.00
NSF fee hydro payment	25.00
Hydro paid by the landlord	200.00
Late rent payment July & August	50.00
TOTAL	\$2,435.00

The application indicated rent claimed in the sum of \$745.00 for each month; the sum considered is that included on the tenancy agreement supplied as evidence. The application indicated a deposit paid in the sum of \$322.00; the tenancy agreement shows \$360.00 was paid.

The bills supplied by the landlord indicated that the hydro account was terminated by the City on March 21, 2013; with a balance owed in the sum of \$228.42. A copy of a notice sent to the property owner by the City, indicated that the outstanding amount owed would be placed on the property tax bill.

The landlord paid this sum and requested payment from the tenant. On April 24, 2013 the landlord sent the tenant a letter with a copy of the hydro bill for service to April 11, 2013, that had not been paid in the sum of \$265.14. A copy of this letter was supplied as evidence. The tenant gave the landlord a cheque, which was returned as NSF. A copy of the NSF cheque was not supplied as evidence.

The landlord has claimed \$200.00 compensation for hydro costs paid by the landlord. The subsequent bills issued for hydro indicated a new account had been opened.

The bills that followed, for usage to August 12, 2013, were all paid. If the tenant does not pay the hydro costs those costs are applied to the landlord's property taxes. The landlord has yet to see the bill for hydro usage beyond August 12, 2013.

The landlord stated that on July 24, 2013 a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of August 3, 2013 was served by posting to the tenant's door, in the morning. The landlord's maintenance person was present as a witness. The tenant came to the door and yelled at the landlord.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$745.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days. The sum owed included a late rent fee.

On July 25, 2013 the landlord served the tenant a 2nd 10 day Notice to end tenancy for unpaid utilities in the sum of \$200.00 for hydro costs that were owed.

The landlord stated that the tenant has not paid any rent since June 2013.

Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the tenant received the Notice to end tenancy on July 27, 2013.

Section 46(1) of the Act stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on July 30, 2013, I find that the earliest effective date of the Notice is August 6, 2013.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was August 6, 2013.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on August 6, 2013, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights. Therefore, pursuant to section

46(5) of the Act, I find that the tenant accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective 2 days after service to the tenant.

In the absence of evidence to the contrary I find that the landlord is entitled to compensation in the sum of \$2,160.00 for unpaid July, August and September, 2013 rent.

As the landlord paid the sum owed for hydro to March 21, 2013, I find that the landlord is entitled to compensation in the amount claimed; \$200.00. The tenant gave the landlord a cheque, but it could not be negotiated.

I find that the landlord is entitled to compensation in the sum of \$50.00 in late payment fees for July and August, 2013. This sum does not exceed that included in the Regulation and is required as part of clause 7 of the tenancy agreement signed by the tenant.

In the absence of a copy of the NSF cheque verifying the claim, I find that the NSF claim is dismissed.

	Claimed	Accepted
Unpaid July, August, September 2013 rent	\$2,160.00	\$2,160.00
NSF fee hydro payment	25.00	0
Hydro paid by the landlord	200.00	200.00
Late rent payment July & August	50.00	50.00
TOTAL	\$2,435.00	\$2,410.00

The landlord is entitled to retain the security deposit in partial satisfaction of the claim.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord has been granted an Order of possession that is effective 2 days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$2,460.00, which is comprised of rent, late fees and the filing fee.

Based on these determinations I grant the landlord a monetary Order for the balance of \$2,100.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The landlord has leave to apply for hydro costs beyond August 12, 2013 as that hydro bill has not yet been obtained by the landlord.

Conclusion

The landlord is entitled to an Order of possession.

The landlord is entitled to compensation for unpaid rent, and damage or loss under the Act.

The landlord is entitled to retain the security deposit.

The landlord is entitled to filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 10, 2013

Residential Tenancy Branch

