



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Delaney Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, CNC, MNR, FF

Introduction:

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession, a monetary Order for unpaid rent and utilities, and to recover the fee for filing an Application for Dispute Resolution.

The Agent for 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 the Tenant at the rental unit, via registered mail, on October 18, 2013. The Agent for the Landlord cited a Canada Post tracking number 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 the Tenant did not appear at the hearing.

The Agent for the Landlord stated that additional documents the Landlord wishes to rely upon as evidence were sent to the Tenant at the rental unit, via registered mail, on November 12, 2013. The Agent for the Landlord cited a Canada Post tracking number that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 88 of the *Act* and they were accepted as evidence for these proceedings.

In the package of evidence mailed to the Tenant on November 12, 2013, the Landlord has increased the amount of the claim for unpaid rent and utilities from \$1,500.74 to \$3,112.40. As the Landlord has informed the Tenant that the Landlord wishes to increase the amount of the claim for unpaid rent/utilities and it is reasonable for the Tenant to assume that the Landlord would want to recover all the rent/utilities owing, I will permit the Landlord to increase the amount of the claim to \$3,112.40.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause. As the Tenant did not appear at the hearing in support of this Application for Dispute Resolution, I find that he has

abandoned his Application for Dispute Resolution and I dismiss the Application, without leave to reapply.

Preliminary Matter

In the package of evidence mailed to the Tenant on November 12, 2013, the Landlord has also claimed compensation, in the amount of \$716.12, for a property management bill.

Section 59(2)(b) of the *Act* stipulates that an Application for Dispute Resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. I find that the Landlord has not clearly notified the Tenant that the Landlord intends to seek compensation for a property manager's bill and I therefore will not consider the claim for this bill at this hearing.

In reaching this conclusion I was heavily influenced by the fact that on the Application for Dispute Resolution the Landlord has not clearly indicated that the Landlord is seeking a monetary Order for anything other than unpaid rent and/or unpaid rent utilities. I specifically note that the landlord has not applied for a monetary Order of money owed or compensation for damage or loss.

Although I have allowed the Landlord to amend the amount of the claim for unpaid rent/utilities on the basis of the information mailed to the Tenant on November 12, 2013, I do not find it appropriate to consider the claim for \$716.19, as this claim relates to an entirely new issue that was not previously raised by the Landlord, whereas the issue of rent/utilities was previously raised.

Issue(s) to be Decided:

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

Background and Evidence:

The Agent for the Landlord stated that this tenancy began on April 15, 2012; that the Tenant is required to pay monthly rent of \$1,200.00 by the first day of each month; that the Tenant is still occupying the rental unit; and that the Tenant did not pay any rent for October or November of 2013.

The Agent for the Landlord stated that on October 02, 2013 he posted a signed Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of October 14, 2013, on the door of the rental unit. A copy of this Notice was submitted in evidence.

The Agent for the Landlord stated that the Tenant is required to pay for water, hydro, and heating costs. The Landlord submitted a copy of a tenancy agreement that corroborates this testimony.

The Landlord has claimed \$332.87 for water charges. The Landlord submitted a copy of a utilities invoice for the period between July 01, 2013 and September 30, 2013, in the amount of \$332.87, which the Agent for the Landlord stated has not been paid. The invoice has charges of \$140.75 for water consumption, \$156.04 for sewer, \$27.30 for garbage, and \$8.78 for recycling.

The Landlord has claimed \$257.72 for hydro charges. The Landlord submitted a copy of a hydro bill in this amount for the period between July 10, 2013 and September 09, 2013, which the Agent for the Landlord stated has not been paid.

The Landlord has claimed \$121.81 for gas charges. The Landlord submitted a copy of two gas bills in this amount for the period between September 11, 2013 and October 09, 2013, which the Agent for the Landlord stated have not been paid.

At the hearing the Landlord declared that another unpaid gas bill of \$118.00 and an unpaid hydro bill of \$97.42 has been received, but not submitted as evidence. At the hearing the Landlord has also asked that I pro-rate anticipated water charges for October and November, although a bill for those charges has not yet been received by the Landlord.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$1,200.00 by the first day of each month and that the Tenant did not pay the rent that was due for October of 2013. As he is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,200.00 in outstanding rent to the Landlord.

Section 46 of the *Act* authorizes a landlord to end a tenancy if rent is not paid when it is due. On the basis of the testimony of the Agent for the Landlord, I find that a signed Ten Day Notice to End Tenancy was posted on the door of the rental unit on October 02, 2013, a copy of which was submitted in evidence. As the evidence shows that the Tenant did not pay rent when it was due and the Tenant was properly served with a Ten Day Notice to End Tenancy, I find that the Landlord has the right to end this tenancy pursuant to section 46 of the *Act*. I therefore grant the Landlord an Order of Possession on the basis of the Ten Day Notice to End Tenancy.

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 October 05, 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 October 05, 2013, I find that the earliest effective date of the Notice is October 15, 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 October 15, 2013.

On the basis of the undisputed evidence, I find that the Tenant is still occupying the rental unit. As the Tenant did not vacate the rental unit on the effective date of the Ten Day Notice to End Tenancy, I find that he is obligated to pay rent, on a per diem basis, for the days he remains in possession of the rental unit. As he has already been ordered to pay rent for the period between October 15, 2013 and October 31, 2013, I find that the Landlord has been fully compensated for that period. I also find that the Tenant must compensate the Landlord for the 19 days in November that the Tenant has remained in possession of the rental unit, at a daily rate of \$40.00, which equates to \$760.00.

I find that I am unable to award compensation for unpaid rent for any period after November 19, 2013, as it is entirely possible that the Tenant will vacate the rental unit on November 19, 2013 and will no longer be required to pay per diem rent. I also note that the Landlord did not apply for compensation for lost revenue.

On the basis of the undisputed evidence, I find that the Tenant is obligated to pay for water consumption during the tenancy; that water charges of \$140.75 were incurred between July 01, 2013 and September 30, 2013; and that this amount has not been paid. I therefore find that the Tenant must pay \$140.75 to the Landlord for water charges.

As the tenancy agreement indicates that garbage collection is included in the rent, I find that the Tenant is not obligated to pay the \$27.30 utility charge for garbage collection which appears on the utility bill for the period between July 01, 2013 and September 30, 2013.

As the tenancy agreement does not specify that the Tenant is obligated to pay for sewer or recycling costs, I find that the Tenant is not obligated to pay the \$164.82 utility charges for these services which appear on the utility bill for the period between July 01, 2013 and September 30, 2013.

On the basis of the undisputed evidence, I find that the Tenant is obligated to pay for hydro used during the tenancy; that hydro charges of \$257.72 were incurred between July 10, 2013 and September 09, 2013; and that this amount has not been paid. I therefore find that the Tenant must pay \$257.72 to the Landlord for hydro charges.

On the basis of the undisputed evidence, I find that the Tenant is obligated to pay for gas used during the tenancy; that gas charges of \$121.81 were incurred between September 11, 2013 and October 09, 2013,; and that this amount has not been paid. I therefore find that the Tenant must pay \$121.81 to the Landlord for gas charges.

As the Landlord has not provided a gas bill in the amount of \$118.00 or a hydro bill in the amount of \$97.42, I decline to consider a claim for compensation in these amounts. When documentary evidence is available to corroborate a claim, I find that it must be submitted to support the claim. The Landlord retains the right to file another Application for Dispute Resolution seeking compensation for these amounts if they remain unpaid after the bills have been provided to the Tenant.

As the Landlord does not know precisely what the water charges will be for October and November, I am unable to award compensation for those charges. The Landlord retains the right to file another Application for Dispute Resolution seeking compensation for water charges if the Tenant does not pay for water charges due.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant 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 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.

The Landlord has established a monetary claim, in the amount of \$2,530.28, which is comprised of \$1,960.00 in unpaid rent, \$520.28 for unpaid utilities, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution, and I grant the Landlord a monetary Order for this amount. 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.

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: November 20, 2013

Residential Tenancy Branch