



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Offwest Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, CNR, OPR, OPC, MNR, FF

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*). The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- an order regarding what he maintained was an additional rent increase pursuant to section 43.

The landlord applied for:

- an Order of Possession for unpaid rent and utilities, and for cause pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67;
- authorization to retain the tenant's pet damage and security deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 2:02 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord's representatives attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord's male representative (the male agent) testified that he handed the tenant the 10 Day Notice on March 24, 2014. The landlord's female representative (the female agent) testified that she witnessed the male agent hand the tenant the 10 Day Notice as declared by the male agent. I am satisfied that the tenant was served with the 10 Day Notice in accordance with section 88 of the *Act* on March 24, 2014.

The male agent testified that he handed the tenant a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) due to the alleged late payment of rent on April 3, 2014. The female agent testified that she also sent the tenant a copy of this Notice by

registered mail on April 3, 2014. She provided the Canada Post Tracking Number to confirm this registered mailing. I am satisfied that the 1 Month Notice was served to the tenant in person on April 3, 2014. In accordance with sections 88 and 90 of the *Act*, I also find that the tenant was deemed served with the landlord's 1 Month Notice on April 8, 2014, the fifth day after its registered mailing.

The male agent gave sworn testimony that he handed the tenant a copy of the landlord's original dispute resolution hearing package on April 3, 2014. I find that this package was served to the tenant in accordance with section 89 of the *Act*. The female agent testified that she sent the tenant a copy of the landlord's amended dispute resolution hearing package by registered mail on April 24, 2014, in which the landlord added the request to end the tenancy for cause to the other issues identified in the landlord's original hearing package. Pursuant to section 89 and 90 of the *Act*, I am satisfied that these documents and copies of the landlord's written evidence package were deemed served to the tenant by registered mail on April 29, 2014, the fifth day after their mailing.

Tenant's Application

Rule 10.1 of the Residential Tenancy Branch's (the RTB's) Rules of Procedure reads as follows:

10.1 Commencement of the dispute resolution proceeding The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the tenant's participation in this hearing, I order the tenant's application dismissed without liberty to reapply.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent and/or unpaid utilities? Is the landlord entitled to a monetary award for unpaid rent and utilities? Is the landlord entitled to retain the tenant's deposits 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

The landlord entered into written evidence a copy of the Residential Tenancy Agreement (the Agreement) signed by both parties on December 1, 2012 for a periodic

tenancy that began on December 1, 2012. According to the terms of the Agreement, monthly rent was set at \$675.00, payable in advance on the first of each month, plus 40% of the utilities. The landlord continues to hold the tenant's \$340.00 security deposit paid in November 2012, and \$335.00 pet damage deposit paid in two stages by the tenant by February 1, 2013.

The female agent testified that the tenant paid \$645.00 towards his March 2014 rent on March 7, 2014. She said that since that date, the tenant has not made any further payments for either rent or utilities for this rental property. The landlord's 10 Day Notice identified \$30.00 in unpaid rent owing as of March 24, 2014, and \$540.00 in utilities. The 10 Day Notice did not state when the landlord advised the tenant of a written demand that he pay the outstanding utility bill.

The landlord's application for a monetary award of \$1,920.00 included the following items listed in the landlord's application for dispute resolution:

Item	Amount
Unpaid March 2014 Rent	\$30.00
Unpaid April 2014 Rent	675.00
Unpaid May 2014 Rent	675.00
Tenant's Portion of Unpaid Utilities	540.00
Total of Above Items	\$1,920.00

The landlord also supplied detailed hydro and gas bills for this rental property covering the period from November 2013 until the present. The female agent maintained that these bills showed that the tenant had failed to pay \$547.20 of the overall \$1,368.01 utility costs for this period as of March 14, 2014. After the landlord submitted this claim and after the additional gas bill dated April 7, 2014 was received, the female agent submitted additional written evidence in which she requested an additional \$43.36 for the tenant's portion of the gas bill for this most recent period.

Analysis

Based on the sworn testimony before me, I find that on a balance of probabilities that the tenant failed to pay the full amount of rent identified as owing in the 10 Day Notice within five days of receiving the 10 Day Notice. I find no evidence to support the claim made by the tenant in his application for dispute resolution that the landlord illegally increased his monthly rent. The \$675.00 requested by the landlord for March 2014 was the same amount shown as the monthly rent in the signed Agreement entered into written evidence by the landlord. While the landlord does not appear to have correctly completed the unpaid utility portion of the 10 Day Notice, the tenant's failure to pay the

\$30.00 owing for rent for March 2014 within five days of receiving that Notice effectively ended this tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by April 3, 2014. As that has not 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.

Since an Order of Possession has been issued to the landlord for unpaid rent, there is no need to consider the landlord's subsequent application to end this tenancy for cause.

Based on the landlord's undisputed sworn testimony and written evidence, I allow the landlord a monetary award of \$30.00 in unpaid rent for March 2014, \$675.00 in unpaid rent for April 2014 and \$675.00 in unpaid rent for May 2014.

Although I find the landlord's utility bills somewhat difficult to follow, I am satisfied that the landlord has provided sufficient evidence to demonstrate that the tenant has not paid his utility bills since November 2013, as claimed by the landlord.

I accept for the most part the landlord's undisputed document entitled "Outstanding Utilities as of March 14th 2014" entered into written evidence by the landlord. This document provided a breakdown of \$730.63, which the landlord claimed was the overall charge for hydro for the billing dates from November 14, 2013 until March 14, 2014. This document also provided a breakdown of the landlord's claim that the overall charge for hydro for the billing dates from November 6, 2013 until March 7, 2014 was \$637.38. These two figures totalled \$1,368.01. The landlord calculated the tenant's portion of the above utility bills as \$547.20, representing 40% of that figure.

I find that the above calculations include late payment charges totalling \$7.85. As I find that the tenant should not be held responsible for any portion of late payment charges, I reduce the total of \$1,368.01 for utilities covering the above periods by \$7.85, resulting in an overall utility charge of \$1,360.16. The tenant's portion of this overall charge is \$544.06 (i.e., $\$1,360.16 \times 40\% = \544.06). I also find that the tenant is responsible for 40% of the most recent gas bill entered into written evidence by the landlord covering the billing date of April 7, 2014. This results in an additional award of \$43.38 (i.e., $\$108.45 \times 40\% = \43.38). Based on the above calculations, I find that the landlord is entitled to a monetary award of \$587.44 for unpaid utilities arising out of this tenancy ($\$544.06 + \$43.38 = \$587.44$).

I allow the landlord to retain the tenant's deposits in partial satisfaction of the monetary award issued in this decision. No interest is payable on these deposits over this period.

Conclusion

I dismiss the tenant's application without leave to reapply.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant 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, utilities, and the filing fee, and to retain the tenant's deposits:

Item	Amount
Unpaid March 2014 Rent	\$30.00
Unpaid April 2014 Rent	675.00
Unpaid May 2014 Rent	675.00
Tenant's Portion of Unpaid Utilities	587.44
Less Deposits (\$340.00 + \$335.00 = \$675.00)	-675.00
Landlord's Filing Fee	50.00
Total Monetary Order	\$1,342.44

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: May 16, 2014

Residential Tenancy Branch

