



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, 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 Utilities, a monetary Order for unpaid rent and utilities, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution. It is readily apparent from the details of the dispute that the Landlord is also seeking compensation for a "late fee" and that issue will therefore be considered at these proceedings.

The Agent for the Landlord applied to amend the application to include a claim for unpaid rent from November of 2014. The Tenant did not oppose the amendment and the application for amendment was granted.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Agent for the Landlord stated that on October 16, 2014 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord wishes to rely upon as evidence were personally served to the Tenant. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Tenant submitted no documentary evidence.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession; to a monetary Order for unpaid rent, unpaid utilities, and a late fee; and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that the Tenant moved into the rental unit on June 01, 2013 and they signed a new tenancy agreement for a tenancy that began on June 01, 2014. The parties agree that the Tenant was required to pay \$1,000.00 in rent by the first day of each month and that the Tenant paid a security deposit of \$500.00.

The Landlord and the Tenant agree that the Tenant still owes \$265.00 in rent from September of 2014 and \$1,000.00 in rent from October of 2014. The parties agree that no rent has been paid for November of 2014. The Tenant stated that she intends to vacate the rental unit by November 19, 2014.

The Agent for the Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of October 07, 2014, was either personally served to the Tenant by his parents on October 03, 2014 or was posted on the door of the rental unit by his parents on October 03, 2014. The Tenant stated that she believes she found the Notice under the door of her rental unit, although she cannot recall the date she received it.

The Landlord and the Tenant agree that the Tenant was obligated to pay for hydro costs during the tenancy. The Landlord submitted a copy of a hydro bill for the period between July 11, 2014 and September 11, 2014, in the amount of \$170.97. The Tenant stated that she believes she gave the Landlord \$170.00 for this bill, in cash, on September 15, 2014. The Agent for the Landlord stated that he does not believe the bill has been paid.

The Agent for the Landlord stated that the Tenant also owes \$50.00 in hydro from a previous bill, although this bill was not submitted in evidence. The Tenant stated that she does not believe she owes anything from a previous bill.

The Agent for the Landlord stated that he believes the claim of \$25.00 for a late fee relates to bank charges incurred as a result of the rent not being paid on time, although he is not certain of the details of this claim. The Landlord submitted no evidence that bank fees have been charged.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,000.00 by the first day of each month and the Tenant still owes \$265.00 in rent from September of 2014 and \$1,000.00 in rent from October of 2014. As the Tenant is required to pay rent pursuant to section 26(1) of the *Residential Tenancy Act* (Act), I find that she must pay \$1,265.00 in outstanding rent to the Landlord for these months.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days, by providing proper written notice. On the basis of the undisputed evidence, I find that the Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was received by the Tenant. As the Agent for the Landlord stated that the Notice was either posted or personally served on October 03, 2014 and the Tenant stated it was located under her door on an unknown date, I find it reasonable to conclude that it was placed under the door on October 03, 2014.

As the Tenant did not pay rent when it was due and the Tenant received a Notice to End Tenancy for Unpaid Rent that declared she must vacate by October 07, 2014, I find that the Landlord has grounds to end this tenancy pursuant to section 46 of the *Act*. I therefore grant the Landlord's application for an Order of Possession.

As the Tenant did not vacate the rental unit in accordance with the Notice to End Tenancy, I find that the Tenant is obligated to pay rent, on a per diem basis, for the days the Tenant remained in possession of the rental unit. I find that the Tenant must compensate the Landlord for 19 days in November, as she intends to vacate the unit on November 19, 2014. I find that she must pay rent for these days at a daily rate of \$33.33, which equates to \$633.27.

The Landlord retains the right to file another Application for Dispute Resolution for additional rent or loss of revenue if the Tenant does not vacate the unit by November 19, 2014.

I find that the Tenant has submitted insufficient evidence to show that the hydro bill of \$170.97 has been paid. In reaching this conclusion I was influenced, in part, by the absence of a receipt for this payment. As the Landlord has issued receipts for other payments, which were submitted in evidence, I find it unlikely that the Landlord would not have provided a receipt if this bill had been paid. In reaching this conclusion I was influenced, in part, by the Tenant's testimony that she paid the bill on September 15, 2014. Given that the bill was not issued until September 18, 2014, I find her testimony lacks credibility. I find that the Tenant must pay the Landlord \$170.97 for this utility bill.

I find that the Landlord has submitted insufficient evidence to show that the Tenant owes \$50.00 from a previous hydro bill. In the absence of a copy of a bill that shows these costs have been incurred, I dismiss the Landlord's application for the \$50.00 hydro payment.

I find that the Landlord has submitted insufficient evidence to show that bank fees were incurred as a result of the Tenant failing to pay rent. In the absence of evidence that these fees were charged, such as a bank statement, I dismiss the Landlord's application to recover a \$25.00 banking fee.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing 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 \$2,119.24, which is comprised of \$1,898.27 in unpaid rent, \$170.97 for hydro, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit of \$500.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,619.24. 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 18, 2014

Residential Tenancy Branch

