



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

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

- an Order of Possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The landlord RW, representing both landlords ("landlord") and both tenants attended the hearing. The tenant WR ("tenant") spoke as agent for the tenant KP at the hearing. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses.

The landlord gave sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities, dated October 6, 2014 ("10 Day Notice"), was personally delivered to the tenant WR at the rental unit on October 6, 2014 at 3:00 p.m. The tenant WR testified that he and the other tenant, KP, both received the 10 Day Notice on this date. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were served with the 10 Day Notice on October 6, 2014.

The landlord testified that he served both tenants with the Application for Dispute Resolution hearing notice and first written evidence package ("Application") on October 20, 2014 via registered mail. He provided Canada Post receipts and tracking numbers as proof of service, with his application. The tenant WR testified that he and the other tenant, KP, both received the Application. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the Application on October 25, 2014, the fifth day after its registered mailing.

The landlord testified that he did not serve both tenants with the second written evidence package, which was received by the Residential Tenancy Branch on October 31, 2014. It was comprised of various utility bills and a handwritten breakdown of the monetary damages being claimed by the landlord. The tenant WR testified that he and the other tenant, KP, did not receive the second written evidence package from the landlord and had not previously seen the utility bills during their tenancy. Accordingly, I advised all parties that I would not be considering the landlords' second written evidence package for this hearing, as it was not served on the tenants, as required by Sections 88 and 89 of the *Act*. I provided the landlord with the opportunity to adjourn the hearing or to continue the hearing without consideration of this second written evidence package. The landlord elected to continue with the hearing.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent and utilities?

Are the landlords entitled to a monetary award for unpaid rent and utilities?

Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord provided a copy of a written tenancy agreement with his Application and testified that this periodic tenancy began on March 1, 2004. Rent is payable monthly in the amount of \$950.00 on the first day of each month. Electricity and heat were not included in the rent, as outlined in the tenancy agreement. A security deposit in the amount of \$475.00 was paid by the tenants prior to March 1, 2004. The tenants are occupying the upper level of a house. The tenancy agreement was signed by both tenants and both landlords on February 4, 2004.

Both the landlord and tenant testified that there was an oral agreement for the tenants to pay 60% of the utility bills for their rental unit and this was lowered to 50% sometime before 2012. The landlord kept the utility bills in his name for the rental unit.

The tenants continue to currently reside in the rental unit. The tenant testified during the hearing that both tenants were planning to move on November 30, 2014.

The landlords are seeking a monetary order for unpaid rent and utilities in the amount of \$8,854.49. The landlords provided a ledger with their Application, dated from

December 2012 to October 2014, showing unpaid rent and utility charges, totalling \$8,854.49. The tenant testified that both tenants were not disputing the amount owing.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

The landlord and both tenants agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on November 30, 2014, by which time the tenants will have vacated the rental unit.
2. The tenants agreed to pay the landlords the total amount of \$8,954.49, which includes \$8,854.49 in unpaid rent and utilities and \$100.00 for the filing fee for this Application.
3. The tenants agreed to commence repaying the above-noted sum on January 15, 2015.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties.

Conclusion

To give effect to the settlement reached between the parties, I issue the attached Monetary Order to be used by the landlords **only** if the tenants do not abide by the terms set out in the above agreement. The landlords are provided with this Order in the above terms and the tenants must be served with this Order in the event that the tenants do not abide by the terms set out in their agreement. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

To give effect to the settlement reached between the parties, I issue the attached Order of Possession to be used by the landlords **only** if the tenants fail to vacate the rental premises in accordance with their agreement. The landlords are provided with this Order in the above terms and the tenants must be served with this Order in the event that the tenants do not vacate the premises by the date set out in their agreement.

Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 05, 2014

Residential Tenancy Branch

