



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. Although served with the Application for Dispute Resolution and Notice of Hearing by personal service on April 1, 2015, the tenants did not appear.

Issue(s) to be Decided

- Is the landlord entitled to an order of possession and, if so, on what terms?
- Is the landlord entitled to a monetary order and, if so, in what amount?

Background and Evidence

This one year fixed term tenancy commenced February 4, 2015. The monthly rent of \$1200.00 is due on the first day of the month. The tenants paid a security deposit of \$600.00.

There is a written tenancy agreement. The agreement specifies that natural gas, heat and electricity are not included in the rent. There is a separate hydro meter for this unit. The hydro account is in the landlord's name.

On the tenancy agreement water is checked off as a service to be included in the rent. However, next to "water" is the notation that the amount is to be divided by three. The landlord explained that the agreement was that the water bill was to be divided between the three rental units in this triplex.

On March 17, 2015, the landlord issued and posted a 10 Day Notice to End Tenancy for Non-Payment of Rent. The tenants moved out before the end of March without paying any rent for March and without disputing the notice to end tenancy. They left a number of their personal belongings in the unit.

The landlord submitted a BC Hydro account for the period January 14 to March 13 in the amount of \$246.48 and a municipal water bill dated March 4, 2015 for the period October 1, 2014 to January 31, 2015.

Analysis

Although the tenants appear to have moved out of the rental unit the landlord asked for an order of possession for his protection. I find that the tenants were served with a 10 Day Notice to End Tenancy for Non-Payment of Rent. They did not pay the outstanding rent and did not file an

application to dispute the notice and are therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts I find that the landlord is entitled to an order of possession.

I find that the tenants are responsible for the March rent in the amount of \$1200.00.

There are two problems with the landlord's claim for the water bill. The first is that the invoice is for water used in the four months before the tenants moved into the rental unit. The second is that the tenancy agreement is ambiguous about whether water is included in the rent. On the one hand it is checked off as being included in the rent; on the other hand the notation states that the tenants are to pay one third of the water bill.

There are legal principles that govern the interpretation of express contractual terms. One is that in cases of ambiguity or doubt language should be construed against the drafter of the contract. This rule, called by its Latin name, is the "contra proferentum" rule". For both of these reasons, the landlord's claim for the water bill is dismissed.

The hydro bill is for the period January 14 to March 13, a total of 59 days. The tenants are responsible for the portion of this bill from February 1 to March 13, a total of 41 days. Accordingly, I find that the tenants are responsible for payment of the sum of \$171.28.

In summary, I find that the landlord has established a total monetary claim of \$1412.28 comprised of unpaid rent for March in the amount of \$1200.00; unpaid hydro in the amount of \$171.28; and the \$50.00 paid by the landlord for this application. I order that the landlord retain the deposit of \$600.00 in partial satisfaction of the claim and I grant the landlord a monetary order for the balance due of \$821.28.

Conclusion

- a. An order of possession has been granted to the landlord. If necessary this order may be filed in the Supreme Court and enforced as an order of that court.
- b. A monetary order has been granted to the landlord. If necessary, this order may be filed in the 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: May 18, 2015

Residential Tenancy Branch

