



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, 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, a monetary Order for unpaid rent and utilities, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on October 21, 2015 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord submitted to the Residential Tenancy Branch on November 25, 2015 were all served to each Tenant, via registered mail. The Landlord submitted Canada Post documentation 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 neither Tenant appeared at the hearing.

Preliminary Matter #1

The Landlord clarified the correct address of the rental unit, which is the address that appears on the first page of this decision. The Landlord recorded the incorrect address on the initial Application for Dispute Resolution however it is corrected in the amended Application for Dispute Resolution.

The Landlord clarified the correct name of the Applicant, which is the name that appears on the first page of this decision. The Landlord provided an incorrect/incomplete name on the initial Application for Dispute Resolution however it is corrected in the amended Application for Dispute Resolution.

Preliminary Matter #2

The Landlord applied to amend the Application for Dispute Resolution to include a claim for unpaid rent for November and December. I find it is reasonable for the Tenants to conclude that the Landlord will be seeking all rent that is currently due; including rent that became due after the Landlord filed this Application. I therefore grant the Landlord's request to amend the Application to include a claim for unpaid rent from November and December of 2015.

Issue(s) to be Decided

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

Background and Evidence

The Agent for the Landlord stated that:

- this tenancy began on July 01, 2012;
- the Tenants agreed to pay monthly rent of \$1,382.50, in advance by the last day of each month;
- the Tenant agreed to pay 2/3 (66%) of the gas and hydro bills;
- the Tenants paid a security deposit of \$650.00;
- on September 26, 2015 the Tenants paid \$750.00 of the rent due for September of 2015;
- on October 02, 2015 the Tenants paid \$400.00 of the rent due for October of 2015;
- on October 08, 2015 the Tenants paid \$260.00 of the rent due for October of 2015;
- on October 17, 2015 the Tenants paid \$400.00 of the rent due for October of 2015;
- the Tenants did not pay any rent for November or December of 2015;
- on October 02, 2015 he personally served one of the Tenants with a Ten Day Notice to End Tenancy for Unpaid Rent and Utilities, which had an effective date of October 12, 2015.

The Landlord submitted a copy of the tenancy agreement which corroborates the Landlord's submission that the Tenants agreed to pay 2/3 (66%) of the gas and hydro bills.

The Landlord submitted five utility bills in evidence. The Agent for the Landlord stated that the Tenants have paid their portion of three of those bills.

The Agent for the Landlord stated that the Tenants have not paid the Tenants' portion of the hydro bill dated October 07, 2015, which is in the amount of \$457.87. The Agent for the Landlord stated that the Tenants installed a hot tub and that the Tenants agreed to

pay the first \$50.00 of this bill and then to pay their portion of the remaining bill. The Agent for the Landlord stated that the Tenants are required to pay \$321.00 of this bill.

The Agent for the Landlord stated that the Tenants have not paid the Tenants' portion of the gas bill dated October 06, 2015. Total charges for this billing period appear to be \$49.65. The Agent for the Landlord stated that the Tenants are required to pay \$32.43 of this bill.

Analysis

On the basis of the undisputed evidence, I find that the Tenants entered into a tenancy agreement with the Landlord that required the Tenants to pay monthly rent of \$1,382.50 during the latter portion of their tenancy; that they still owe \$632.50 in rent for September of 2015; and that they still owe \$322.50 in rent for October of 2015. As the Tenants are required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenants must pay \$955.00 in rent for September and October of 2015.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within ten days, by providing proper written notice. On the basis of the undisputed evidence, I find that the Ten Day Notice to End Tenancy for Unpaid rent and Utilities, served pursuant to section 46 of the *Act*, was personally served to the Tenants on October 02, 2015.

Section 46 of the *Act* stipulates that a tenant has five days from the date of receiving the Notice to End Tenancy to either pay all of the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. I have no evidence that the Tenants exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenants accepted that the tenancy has ended. On this basis I grant the landlord an Order of Possession, which will be effective on December 31, 2015 in accordance with the Landlord's wishes.

As the Tenants did not vacate the rental unit on the effective date of the Notice to End Tenancy, which was October 12, 2015, I find that they are obligated to pay rent, on a per diem basis, for the days they remained in possession of the rental unit. As the Tenants have already been ordered to pay rent for the period between October 13, 2015 and October 31, 2015, I find that the Landlord has been fully compensated for that period.

I also find that the Tenants must compensate the Landlord for the months of November and December of 2015, in the amount of \$2,765.00, as the Tenants remain in possession of the rental unit and will be entitled to remain in possession of the unit until December 31, 2015.

On the basis of the tenancy agreement submitted in evidence, I find that the Tenants are required to pay 66% of the gas and hydro bills, which is the lesser of the two amounts noted on the tenancy agreement. (2/3 is 66.66%).

On the basis of the undisputed evidence I find that the Tenants agreed to pay the first \$50.00 of the hydro bill dated October 07, 2015 plus 66% of the remaining bill and that the Tenants have not paid their portion of this bill. I calculate the Tenants portion of the \$457.00 bill to be \$50.00 plus 66% of \$407.87, which is \$319.19.

On the basis of the undisputed evidence I find that the Tenants have not paid their portion of the \$49.65 gas bill dated October 06, 2015. I calculate the Tenants portion of this bill to be \$32.77.

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 **at 1:00 p.m. on December 31, 2015**. 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 \$4,121.96, which is comprised of \$3,720.00 in unpaid rent, \$351.96 in unpaid utilities, 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 Tenants' security deposit of \$650.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$3,471.96. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, 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: December 15, 2015

Residential Tenancy Branch

