



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 is the Landlord's Application for Dispute Resolution seeking an Order of Possession; a Monetary Order for unpaid rent and utilities; compensation for damage or loss under the Act; to apply the security deposit towards his monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

The Tenant acknowledged that she was served with the Notice of Hearing documents and copies of the Landlord's evidence.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession and a monetary award for unpaid rent and utilities?
- Is the Landlord entitled to compensation for loss of revenue and additional unpaid utilities
- May the Landlord apply the security deposit towards his monetary award?

Background and Evidence

The Landlord gave the following testimony:

The rental unit is in a triplex. Monthly rent is \$820.00, due on the first day of each month. The Tenant is responsible for 30% of the cost of utilities. The Tenant paid a security deposit in the amount of \$410.00 at the beginning of the tenancy. The Tenant ran into financial difficulties and has not paid all of her rent when it was due, or her share of utilities, since January, 2013.

The Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") by posting the Notice to the Tenant's door on November 12, 2015.

At the time the Notice was issued, the Tenant was in arrears in the amount of \$2,020.00 for unpaid rent and \$3,014.00 for unpaid utilities. The Tenant has paid some of the unpaid rent since the Notice was issued, which the Landlord has applied to the rent arrears. The Landlord stated that since he filed his Application, rent has not been paid for December or January. He stated that he has also received an additional utility bill, for which the Tenant's share is \$219.00.

The Landlord seeks a monetary award, calculated as follows:

Unpaid rent as at November 12, 2015	\$2,020.00
Less amount paid towards arrears in November, 2015	-\$820.00
Less amount paid towards arrears in December, 2015	-\$800.00
Plus unpaid rent for December, 2015	\$820.00
Plus unpaid rent for January, 2016	\$820.00
Plus unpaid utilities as at November 12, 2015	\$3,014.00
Plus unpaid utilities for November and December, 2015	<u>\$219.00</u>
TOTAL CLAIMED	\$5,273.00

The Tenant gave the following testimony:

The Tenant agreed that she owed the rent and utilities as provided by the Landlord. She stated that she was unable to pay the rent and asked for more time to find alternate accommodation.

The Landlord gave the following reply:

The Landlord asked for an Order of Possession effective January 31, 2016.

Analysis

I accept the Landlord's undisputed testimony that he served the Tenant with the Notice to End Tenancy by posting the Notice to the Tenant's door on November 12, 2015. The Tenant did not pay all of the arrears, or file for dispute resolution, within 5 days of receiving the documents. I am satisfied that the Landlord did not reinstate the tenancy by accepting arrears payments. Therefore, pursuant to Section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on November 25, 2015. The Tenant is over holding and I find that the Landlord is entitled to an Order of Possession effective January 31, 2016, pursuant to the Landlord's request.

Pursuant to Rule 4.2 of the Rules of Procedure, I amend the Landlord's application to include a claim for loss of revenue for the months of December, 2015, and January, 2016, and the additional unpaid utilities. Based on the undisputed testimony of the Landlord, I find that he is entitled to a monetary award in the amount of **\$5,273.00**.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of his monetary award.

The Landlord has been successful in his Application and I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

I hereby provide the Landlord a Monetary Order, calculated as follows:

Monetary award	\$5,273.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$5,323.00
Less security deposit	<u>- \$410.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$4,913.00

Conclusion

I hereby provide the Landlord with an Order of Possession effective **1:00 p.m., January 31, 2016** for service upon the Tenant. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord a Monetary Order in the amount of **\$4,913.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: January 21, 2016

Residential Tenancy Branch

