Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes:

OPR, MNR, MNDC, FF

Introduction

This participatory hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord had originally applied via the Direct Request Proceeding process. The landlord had requested an Order of possession and a monetary Order for unpaid rent.

On February 05, 2016 an interim decision was issued and the the application was adjourned to a participatory conference call hearing held on March 09, 2016.

On March 09, 2016 a second interim decision was issued adjourning the application to this final participatory hearing held on April 22, 2016.

At the final hearing held on April 22, 2016 the landlord was reminded she continued to provide affirmed testimony.

The landlord said that on March 15, 2016 the tenant was served with the Notice of this hearing, the hearing documents, the landlord's evidence, a copy of the two previous interim decisions and an amendment submitted on March 15, 2016.

The landlord provided a copy of the registered mail receipt and tracking number for the mail sent to the tenants' rental unit address. The tenant did not claim that mail and it was returned to the landlord; marked as "unclaimed" by Canada Post.

I find, pursuant to section 89(1)(c of the Act that the tenant is deemed to have received the hearing documents, interim decisions, March 15, 2016 amendment and evidence effective March 20, 2016. A party may not avoid service by failing to claim registered mail.

Preliminary Matters

The landlord submitted a March 15, 2016 amendment to the application, adding the claim for stove, in the sum of $175.00 and loss of May 2015 rent. The claim for May rent is dismissed with leave to reapply as May 2016 rent is not yet due.

The amendment served to the tenant on February 23, 2016 included a claim for the value of a pet deposit. I explained that non-payment of a pet deposit is not a loss to the landlord and that when a tenant does not pay a deposit that is required, the landlord may issue a one month Notice to end tenancy for cause. Therefore, this portion of the claim was dismissed.

The landlord claimed the cost of amendment filing fees. I have not considered those fees as the landlord was able to make the total claim as part of a single application.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent and hydro costs?

Is the landlord entitled to a monetary Order for unpaid rent?

Is the landlord entitled to cost for the uses of the stove as a source of heat?

Background and Evidence

The tenancy commenced on November 01, 2015 as a one year term. Rent is $1,050.00 per month, due on the first day of each month. The tenant paid a security deposit in the sum of $525.00. A copy of the tenancy agreement was supplied as evidence.

The tenancy agreement required the tenant to pay the cost of hydro and gas. The landlord checked the boxes that referenced what was included in the rent and placed an X beside those items not included.

On November 09, 2015 the tenant signed a document agreeing to pay 75% of the hydro costs and agreed to open a gas account in her name.

The landlord has made the following claim:

- $3,150.00 unpaid rent January – March, 2016;
- $1,232.82 hydro costs; and
- $175 – stove use cost.

The landlord stated that on January 06, 2016 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of January 14, 2016, was served by personal delivery to the tenant. The landlord and P.K. went to the rental unit and gave the tenant the Notice at approximately 3 p.m. A proof of service document, signed by P.K. and the landlord, confirming service, was supplied as evidence.

The issue date on the Notice is January 14, 2016. The landlord said she recorded an issue date of January 14, 2016 as that was the date the tenant was required to vacate the rental unit.

The Notice indicated that the Notice would be automatically cancelled if the landlord received $1,650.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

There was no evidence supplied explaining why the rent owed on the Notice was in the sum of $1,650.00. The landlord last received a rent payment in December 2015; no rent has been paid since. The landlord has claimed compensation for unpaid rent for January, February and March, 2016, inclusive, totaling $3,150.00.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure provides:

> ***4.2 Amending an application at the hearing***
>
> *In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.*

As the landlord stated April 2016 rent has not been paid I determined that the application would be amended to include a claim for April 2016 rent. The tenant would understand that payment of rent is the most basic term of a tenancy agreement.

The landlord provided a copy of a bill issued by BC Hydro on January 29, 2016 for the rental unit address. The tenant was to pay 75% of this bill and was given a copy of the bill by taping to the rental unit door on February 23, 2016. The bill covered costs between December 4, 2015 and January 27, 2016. The tenant placed the account in her name on January 27, 2016.

BC Hydro deducted a security deposit in the sum of $345.00, which had been paid by the landlords' when the account was opened. BC Hydro applied the deposit to the sum owed by the tenant. The landlord added the deposit deduction back on to the bill; totaling $1643.76 and have claimed the 75% portion owed by the tenant. The tenant has not made a payment toward hydro costs.

The tenant was to place the gas service in her name. The unit is heated by gas. Rather than use gas heat the tenant has used the stove and space heaters. The landlord has claimed $175.00 for the cost of using the stove as a heater.

Analysis

I find that the tenant was served with the 10 day Notice to end tenancy effective the date of personal delivery, January 06, 2016, in accordance with section 89(1)(a) of the Act.

I have considered the issue date recorded on the Notice and have applied section 68 of the Act, which provides:

> ***68*** *(1) If a notice to end a tenancy does not comply with section 52 [form and content of notice to end tenancy], the director may amend the notice if satisfied that*
>
> > *(a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and*
> >
> > *(b) in the circumstances, it is reasonable to amend the notice.*
>
> *(2) Without limiting section 62 (3) [director's authority respecting dispute resolution proceedings], the director may, in accordance with this Act,*
>
> > *(a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy, or*
> >
> > *(b) set aside or amend a notice given under this Act that does not comply with the Act.*

Therefore, as the Notice was given to the tenant on January 06, 2016 the tenant would have known the Notice was issued on or before January 06, 2016. Therefore, I find it reasonable in the circumstances to amend the issue date of the Notice to January 6, 2016. The Notice was dated by the landlord, in accordance with section 52 of the Act; but that date was incorrect.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice.

As the tenant received this Notice on January 06, 2016, I find that the earliest effective date of the Notice is January 16, 2016.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier that the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was January 16, 2016.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on January 16, 2016, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights; therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended on the effective date of the Notice; January 16, 2016.

I find, pursuant to section 67 of the Act that the landlord is entitled to compensation in the sum of **$4,200.00** for rent from January 1, 2016 to January 16, 2016 and per diem rent to April 30, 2016, inclusive. I find that there is no reasonable expectation the landlord will obtain possession of the rental unit before April 30, 2016. There was no evidence before me that the tenant has paid this rent.

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. Therefore, I find that the tenant received the hydro bill on February 26, 2016.

From the evidence before me the tenancy agreement did not include hydro as a term and on November 9, 2015 the tenant signed a document confirming she would pay 75% of that bill. Therefore, based on the evidence before me I find that the landlord is entitled to compensation in the sum of **$1,232.82** for hydro costs incurred from December 04, 2015 to January 27, 2016, inclusive. I have taken into account the security deposit payment that was deducted from the sum owed on the bill issued by BC Hydro.

There was no evidence before me in relation to any loss suffered as the result of the use of the stove. Therefore, I find that the claim for the stove is dismissed.

As the landlords' claim has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the **$100.00** filing fee that has been paid, from the tenant for the cost of this Application for Dispute Resolution.

Pursuant to section 72 of the Act, I find that the landlord is entitled to retain the **$525.00** security deposit in partial satisfaction of the claim.

The landlord has been granted an Order of possession that is effective two days after service to 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.

Based on these determinations I grant the landlord a monetary Order for the balance of **$5,007.82.** 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.

Conclusion

The landlord is entitled to an Order of possession.

The landlord is entitled to compensation for unpaid rent and utilities.

The claim for stove costs is dismissed.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

This final decision should be read in conjunction with the interim decisions issued on February 11, 2016 and March 09, 2016 and

This decision is final and binding on the parties and 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: April 22, 2016

Residential Tenancy Branch