



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OP MNR MNSD

Introduction

This hearing dealt with the landlord's 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 pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 9:30 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord testified that he personally served the tenant with the Notice of Dispute Resolution Hearing on March 24, 2016 at 8:15 a.m.

Issues

Is the landlord entitled to an order of possession for unpaid rent?

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

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Background and Evidence

The tenancy began on October 1, 2014 with a monthly rent of \$1450.00 which included only the upper floor of the house. On April 29, 2015, a new tenancy agreement was signed whereby the tenants took possession of an additional room in the lower floor of the house in exchange for a monthly rent of \$2000.00 payable in advance on the 27th day of the month preceding the month for which the payment applies. The agreement also specified that the tenant is responsible for 100 % of the BC Hydro and Fortis Gas bills and the cold water utilities bill in excess of \$20/month. The tenant paid a security deposit of \$215.00 at the start of the tenancy. Pursuant to the new agreement an increased security deposit in the amount of \$785.00 was payable on May 15, 2015. The landlord testified that he continued to hold the \$215.00 security deposit paid by the tenant and that the balance of the security deposit was never paid.

The landlords claim is for a total of \$2,511.39 in outstanding rent & utilities as per below:

Item	Amount
October 2014 Monetary Order	\$510.00
August 2015 Rent	100.00
September 2015 Rent	500.00
October 2015 Rent	1000.00
March 2016 Rent	2000.00
April 2016 Rent	2000.00
- Less March 18, 2016 payment	-2100.00
- Less April 3, 2016 payment	-2100.00
Utilities	601.39
Total Monetary Order Sought	\$2,511.39

The landlord provided the tenant with a demand letter for payment of the outstanding rent & utilities and included a copy of the utilities bills.

The landlord testified that on March 4, 2016 he served the tenant with the 10 day Notice to End Tenancy for unpaid rent or utilities by posting a copy to the door of the rental premises. A witnessed proof of service of this Notice was provided with the application.

Analysis

Based on the above evidence, I am satisfied that the tenant was duly served with the Notice of Dispute Resolution Hearing pursuant to sections 89 of the Act. I am also satisfied that the tenant was deemed served with the 10 day Notice to End Tenancy on March 7, 2016, three days after its posting, pursuant to sections 88 & 90 of the Act.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, March 17, 2016.

I find that the tenant was obligated to pay the monthly rent in the amount of \$2000.00 plus 100% of utilities as per the tenancy agreement. I accept the landlord's claim for outstanding rent & utilities as detailed above less the claim of \$510.00 which was for an order already granted in another application.

The landlord testified that he continues to hold a security deposit of \$215.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to an Order of Possession and a Monetary Order in the amount of \$1786.39 for outstanding rent & utilities (\$2511.39 - \$510.00 - \$215.00).

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the Act, I grant the landlord a Monetary Order in the amount of \$1,786.39. Should the tenant 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.

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: April 08, 2016

Residential Tenancy Branch