



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUTTON ADVANTAGE PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

<u>Dispute Codes</u>	Landlord:	OPR MNR
	Tenant:	CNR

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Landlord's Application was received at the Residential Tenancy Branch on January 27, 2017 (the “Landlord's Application”). The Landlord applied for the following relief pursuant to the *Act*:

- an order of possession for unpaid rent or utilities; and
- a monetary order for unpaid rent or utilities.

The Tenant's Application was received at the Residential Tenancy Branch on January 13, 2017 (the “Tenant's Application”). The Tenant applied for an order cancelling a notice to end tenancy for unpaid rent or utilities, pursuant to the *Act*.

The Landlord was represented at the hearing by G.H., who provided affirmed testimony. The owners of the rental unit, D.M. and C.M., also attended the hearing but did not provide oral testimony. The Tenant did not attend the hearing.

On behalf of the Landlord, G.H. testified that the Landlord's Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Tenant by registered mail on January 27, 2017. Pursuant to sections 89 and 90 of the *Act*, documents served in this manner are deemed to have been received five days later. I find the Landlord's evidence is deemed to have been received by the Tenant on February 1, 2017.

The Landlord's agent was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The Landlord submitted into evidence a copy of the written tenancy agreement between the parties. It confirms the parties entered into a fixed-term tenancy agreement from November 1, 2016 to February 28, 2017. The Tenant agreed to move out of the rental unit at the end of the fixed term. Rent in the amount of \$1,100.00 per month is due on the first day of each month. The Tenant paid a pet damage deposit of \$550.00, which the Landlord holds. Paragraph 44 of the tenancy agreement states:

*TENANT WILL REIMBURSE LANDLORD FOR 70% OF BC HYDRO +
CRD WATER WITHIN 14 DAYS OF RECEIVING A COPY OF THE
INVOICE.*

[Reproduced as written.]

On behalf of the Landlord, G.H. testified the Tenant did not pay rent when due on January 1, 2017. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 7, 2017 (the "10 Day Notice"). The 10 Day Notice was served on the Tenant by registered mail on January 7, 2017. The Landlord submitted a Canada Post registered mail receipt in support. G.H. also testified that the Tenant did not pay rent when due on February 1, 2017, and that \$2,200.00 is currently outstanding.

In addition, G.H. testified the Tenant agreed to pay 70% of BC Hydro and CRD water charges. As summarized in the Landlord's Application, G.H. confirmed that the Tenant owes BC Hydro charges totalling \$630.13 and CRD water charges totalling \$39.64. In support, the Landlord submitted into evidence a letter to the Tenant, dated January 18, 2017, demanding payment of the BC Hydro and other charges. According to G.H., the BC Hydro and CRD water charges have not been paid by the Tenant, and \$669.77 remains outstanding.

As noted above, the Tenant did not attend the hearing.

Analysis

Based on the unchallenged oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, as the Tenant did not attend the hearing, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Landlord's claim for unpaid rent and utilities, section 26(1) of the *Act* states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

[Reproduced as written.]

In addition, section 46 of the *Act* permits a Landlord to treat utilities as rent where the tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them.

On behalf of the Landlord, G.H. testified, and I find, that rent was not paid when due on January 1 and February 1, 2017, and that rent in the amount of \$2,200.00 remains outstanding. In addition, G.H. testified, and I find, that BC Hydro and CRD water charges totalling \$669.77 were not paid by the Tenant after a written demand was made. Accordingly, the utility charges may be treated as rent. I find the Landlord has demonstrated an entitlement to a monetary award of \$2,869.77 for unpaid rent and utilities. As the Landlord has been successful, I also award the Landlord \$100.00 as recovery of the filing fee.

In addition, I find the Landlord has demonstrated an entitlement to an order of possession, which will be effective two (2) days after it is served on the Tenant.

The Landlord's agent requested that I apply the pet damage deposit to any monetary order I make. Accordingly, I grant the Landlord a monetary order in the amount of \$2,419.77, which has been calculated as follows:

Claim	Amount
Unpaid rent and utilities:	\$2,869.77
Filing fee:	\$100.00
LESS pet damage deposit:	(\$550.00)
TOTAL:	\$2,419.77

Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after it is served on the Tenant. This order may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$2,419.77. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The Tenant's Application is dismissed without leave to reapply.

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: February 21, 2017

Residential Tenancy Branch