



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 for Unpaid Rent or Utilities, a monetary Order for unpaid rent or 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.

Legal Counsel for the Landlord stated that on March 02, 2017 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents.

On March 02, 2017 Landlord submitted 40 pages of evidence to the Residential Tenancy Branch. Legal Counsel for the Landlord stated that these documents were served to the Tenant with the Application for Dispute Resolution. The Tenant stated that she did not receive 40 pages of evidence with the Application for Dispute Resolution. She acknowledged receiving a copy of the tenancy agreement and a copy of a Ten Day Notice to End Tenancy, which declared that she owed \$1,173.04 in unpaid utilities in the evidence package. The evidence the Tenant acknowledged receiving was accepted as evidence.

The parties were advised that the Landlord's evidence the Tenant did not acknowledge receiving would not be accepted as evidence for these proceedings. The Landlord was advised that the Landlord would be able to refer to documentary evidence during the hearing and that if, during the hearing, the Landlord believed it was necessary for me to physically view the evidence the Landlord could request an adjournment. This hearing was concluded without the Landlord requesting an adjournment.

On March 20, 2017 Landlord submitted 3 pages of evidence to the Residential Tenancy Branch. Legal Counsel for the Landlord stated that these documents were served to the Tenant, by registered mail, on March 20, 2017. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

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Tenancy, which declared that she owed \$1,173.04 in unpaid utilities in the evidence package. The evidence the Tenant acknowledged receiving was accepted as evidence.

The parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

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

Background and Evidence

The Landlord and the Tenant agree that:

- the current monthly rent of \$1,000.00 is due by the first day of each month;
- the Tenant paid a security deposit of \$450.00;
- the Tenant is required to pay the hydro charges during the tenancy;
- on January 24, 2017 the Tenant was given a written demand to pay a hydro bill of \$1,173.00;
- the Landlord typically pays the hydro bill, which is in the name of the Tenant and the Landlord; and
- the Tenant typically pays the hydro charges to the Landlord.

At the hearing the Landlord withdrew the claim for unpaid rent from March of 2017, as rent for that month has been paid.

Legal Counsel for the Landlord stated that a Ten Notice to End Tenancy was posted on the door of the rental unit on February 24, 2017, which declared that the Tenant must vacate the rental unit by March 06, 2017 because she has failed to pay utilities of \$1,173.04.

The Tenant stated that she found this Notice to End Tenancy in the garden on February 27, 2017. She stated that there was tape on the Notice, which causes her to believe it may have been posted on her door. She stated that she did not file an Application for Dispute Resolution disputing the Notice.

Legal Counsel for the Landlord stated that when the aforementioned Notice to End Tenancy was posted on the door of the rental unit the Landlord was not aware that the Tenant had paid \$600.00 directly to the BC Hydro earlier that month. The Landlord and the Tenant agree that the Tenant paid \$600.00 directly to the BC Hydro prior to February 24, 2017, bring the hydro arrears to \$573.04.

Legal Counsel for the Landlord stated that upon learning that \$600.00 had been paid to BC Hydro, the Landlord personally served an adult male who was residing with the Tenant with Ten Day Notice to End Tenancy which declared that the Tenant must

vacate the rental unit by March 06, 2017 because she has failed to pay utilities of \$573.04. The Tenant stated that this adult male is a former roommate and that he did not give her a copy of this Notice to End Tenancy.

The Landlord and the Tenant agree that on February 28, 2017 the Tenant paid another \$458.01 in utilities, leaving a balance owing of \$115.03.

Legal Counsel for the Landlord stated that some of the charges outlined on the Application for Dispute Resolution related to charges associated to the hydro service to the rental unit being discontinued. He stated that the Landlord is withdrawing all of those charges and only wishes to proceed with hydro consumption charges at these proceedings.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay hydro charges during the tenancy and that the Tenant currently owes \$115.03 in charges for hydro consumption. I therefore find that the Tenant must pay this amount to the Landlord.

Section 46(1) of the *Residential Tenancy Act (Act)* entitles landlords to end a tenancy within ten days if rent is not paid when it is due by providing proper written notice. Section 46(2) of the *Act* stipulates that if a 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, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

On the basis of the undisputed evidence that on January 24, 2017 the Tenant was given a written demand to pay a hydro bill of \$1,173.00 and the full amount due was not paid by February 23, 2017, I find that the Landlord had the right to treat the unpaid utilities as unpaid rent. I therefore find that the Landlord had the right to serve the Tenant with Ten Day Notice to End Tenancy, pursuant to section 46 of the *Act*.

On the basis of the undisputed evidence I find that Ten Day Notice to End Tenancy which declared utilities of \$1,173.04 was due was received by the Tenant on February 27, 2017. As the Tenant acknowledged receipt of the Notice, I find that it was sufficiently served to the Tenant, pursuant to section 71(2)(b) of the *Act*.

Section 46(4) of the *Act* stipulates that a Tenant has five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. As there is no evidence that the Tenant filed an Application for Dispute Resolution disputing the Notice to End Tenancy that declared utilities of \$1,173.04 was due or that she paid all of the hydro charges that were due, I find that the Tenant accepted that the tenancy ended on the effective date of the Notice, pursuant to section 46(5) of the *Act*. On this basis I grant the landlord an Order of Possession.

As I have concluded that the Landlord is entitled to an Order of Possession on the basis of the Ten Day Notice to End Tenancy that declared utilities of \$1,173.04 was due, which the Tenant received on February 27, 2017, I find that there is no need to consider the merits of the Ten Day Notice to End Tenancy that declared utilities of \$573.04 was due.

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 March 31, 2017. 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 \$215.03, which includes unpaid utilities and \$100.00 for the fee paid to file this Application. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain \$215.03 from the Tenant's security deposit in full satisfaction of the monetary claim. The Landlord remains obligated to comply with section 38 of the *Act* in regards to the remainder of the security deposit.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 29, 2017

Residential Tenancy Branch