



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Eviction Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held, by teleconference, on December 6, 2017. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities;
- 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;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and,
- to recover the filing fee from the tenant for the cost of this application.

The Landlord's Agent (the "Landlord") attended the hearing and provided affirmed testimony. The Tenants did not attend the hearing. The Landlord testified that she sent each Tenant a copy of the Application Package, her Amendment, and her evidence on September 28, 2017. Pursuant to section 90 of the Act, I find the Tenants received these documents on October 3, 2017, the fifth day after their registered mailing.

The Landlord 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.

The bulk of the Landlord's submissions and testimony were regarding unpaid rent and utilities, and she did not present any evidence to show that she required a monetary

order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement. Given that the entirety of the Landlord's claim can be addressed under the remaining grounds, I amend her application to remove application under the following ground:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement

Further, the Landlord has requested to amend her application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (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.

In consideration of this, I hereby amend the Landlord's application accordingly.

Issue(s) 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?
3. Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38?
4. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

Background and Evidence

The Landlord stated that rent in the amount of \$1,500.00 is due on the first day of each month. The Landlord holds a security deposit of \$750.00. The Landlord stated that the Tenants rent the upper half of a house, and they split the utilities with the people in the lower unit. The Landlord stated that the Tenancy Agreement specifies that utilities are not included in rent, and that the upper unit is required to pay 50% of utilities.

The Landlord stated that the Tenants only paid part of April 2017 rent and \$600.00 is still outstanding from that month. The Landlord further stated that they Tenants have not paid any rent or utilities since their partial payment of rent in April of 2017. The Landlord

stated that they are hoping to recover all of this unpaid rent, up to and including December 2017.

Further, the Landlord stated that the Tenants have been given copies of all the utility bills they owe. The Landlord provided copies of these bills and stated that they were given to the Tenants within days of the Landlord receiving them. The bills specify that the Tenants cumulatively owe \$805.78 for their portion of two different BC Hydro bills, one dated May 2017, and the other from July 2017. The Landlord also provided 4 different Fortis Gas utility bills, which specify that the Tenants cumulatively owe \$89.90 for their portion of those bills (4 of them), dated May, June, July, and August of 2017.

The Landlord stated that they have received no money from the Tenants since April of 2017.

The Landlord provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), which was posted to the Tenants' door on August 30, 2017. The 10 Day Notice specified that \$6,600.00 was unpaid at that time.

Analysis

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

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt, under section 46(4) of the *Act*, to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the Tenants had a balance of unpaid rent in the amount of \$6,600.00 at the time the 10 Day Notice was issued. On August 30, 2017, the 10 Day Notice was posted to the door of the rental unit. Pursuant to section 88 and 90 of the *Act*, documents delivered in this manner are deemed served after 3 days. I find the tenants are deemed to have received the 10 Day Notice on September 2, 2017.

The Tenants had 5 days to pay rent in full or file an application for dispute resolution. I find no evidence that the tenants did either. As such, I find the tenants are conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenants.

With respect to the Landlord's request for a monetary order for unpaid rent and utilities, I find there is sufficient evidence to demonstrate that the Tenants owe and have failed to pay \$600.00 in rent for April of 2017, and have failed to pay any rent for May through to December of 2017. As such, I find the Landlord is entitled to recover this amount which totals \$12,600.00. Further, I find the evidence before me sufficiently establishes that the Tenants are responsible for 50% of the utility bills the Landlord submitted as part of this application. I find the Tenants cumulatively owe \$895.68, for their portion of the BC Hydro bills and the Fortis Gas bills submitted into evidence.

The Landlord requested that they be able to retain the security deposit of \$750.00 to offset the amount of rent and utilities owed, and to recover the \$100 filing fee for this application.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the tenants to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount still owed by the tenants.

In summary, I grant the monetary order based on the following:

Claim	Amount
Unpaid rent	\$12,600.00

Unpaid utilities	\$895.68
Other:	
Filing fee	\$100.00
Less:	
Security Deposit currently held by Landlord	(\$750.00)
TOTAL:	\$12,845.68

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenants. This order must be served on the tenants. If the tenants fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$12,845.68**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: December 06, 2017

Residential Tenancy Branch