



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPUM-DR, FFL

Introduction

This case involves a landlord's dispute against their tenant for unpaid rent and utilities, and the landlord seeks an order of possession, compensation for the unpaid rent and utilities, and compensation for the filing fee.

The landlord applied for dispute resolution under the *Residential Tenancy Act* (the "Act") on February 14, 2019, and I presided over a dispute resolution hearing on March 8, 2019. The landlord and her agent attended the hearing, and I gave them full opportunity to be heard, to present evidence, to make submissions, and to call witnesses. The tenant did not attend the hearing.

The landlord's agent testified that he served the Notice of Dispute Resolution Proceeding package on the tenant in person on February 15, 2019 at approximately 7:30 PM. I find that the landlord served the required notice and evidence in compliance with section 89 of the Act.

I have only reviewed and considered oral and documentary evidence that met the requirements of the Act's *Rules of Procedure*, to which I was referred, and that is relevant to the issues of the dispute. This is my decision regarding the dispute between the parties.

Issues to be Decided

1. Is the landlord entitled to an order of possession?
2. Is the landlord entitled to compensation for unpaid rent and utilities?
3. Is the landlord entitled to compensation for the filing fee?

Background and Evidence

The agent testified that the tenant commenced tenancy on November 15, 2018. Monthly rent is \$800.00, and the tenant pays a 1/3 of the utilities bi-monthly. The utilities have come to \$55.00 bi-monthly. I note that the tenant paid a security deposit of \$800.00, more than what is permitted under section 19 of the Act. The landlord currently retains that deposit. There is no written tenancy agreement.

On January 31, 2019, the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"). The Notice was served by being attached to the tenant's front door, and a Proof of Service document submitted into evidence, along with the Notice. The landlord submitted a copy of written demand letter for the unpaid utilities.

The landlord seeks an order of possession for unpaid rent and utilities and a monetary order for unpaid rent and utilities. As of today, the tenant owes \$1,000.00 in unpaid rent (\$200.00 for December 2018 and \$800.00 for March 2019), and he also owes \$110.00 in unpaid utilities (\$55.00 for December 2018 and \$55.00 for February 2019).

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlords comply with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent.

Pursuant to section 46 of the Act, the Notice informed the tenant that the Notice would be cancelled if the tenant paid rent within five days of service. The Notice also explained that the tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The agent testified, and provided documentary evidence to support their submissions, that the tenant owes \$1,000.00 in unpaid rent and \$110.00 in unpaid utilities. There is insufficient evidence before me that the tenant had a right under the Act to deduct some or all of the rent, and no evidence indicating that the tenant applied to cancel the Notice, or any of the 10 Day Notices to End Tenancy for Unpaid or Utilities that were served on

the tenant, for that matter.

Taking into consideration the undisputed oral testimony of the landlord's agent, and the documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving her claim that the tenant owes \$1,110.00 in unpaid rent and utilities.

As the landlord is successful in her claim, I grant the landlord a further monetary award in the amount of \$100.00 for recovery of the filing fee.

I order the landlord to keep the security deposit in partial satisfaction of the award.

I calculate a monetary order of \$410.00 for the landlord as follows:

CLAIM	AMOUNT
Unpaid rent	\$1,000.00
Unpaid utilities	110.00
Filing Fee	100.00
LESS security deposit	(\$800.00)
Total:	\$410.00

Regarding the order of possession sought by the landlord, 55(2)(b) of the Act states that

A landlord may request an order of possession of a manufactured home site in any of the following circumstances by making an application for dispute resolution: [. . .]

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

In this case, the landlord applied for dispute resolution seeking an order of possession, the landlord issued a notice to end the tenancy, the tenant did not dispute the Notice, and the time for making that application had expired.

Ergo, I grant the landlord an order of possession of the rental unit.

Conclusion

I hereby grant the landlord an order of possession, which must be served on the tenant and is effective two days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I hereby grant the landlord a monetary order in the amount of \$410.00, which must be served on the tenant. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: March 8, 2019

Residential Tenancy Branch