



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LAT, LRE, MNDC, MNSD, MNR, OPC, OPR, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on March 12, 2019 for:

1. An Order cancelling a notice to end tenancy - Section 46;
2. An Order allowing a lock change - Section 70;
3. An Order restricting the Landlord’s access - Section 70; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on March 26, 2019 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67;
3. A Monetary Order for compensation - Section 72;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Parties named the Tenant differently in each of their applications: the Landlord sets out “DJE” and the Tenant sets out “DE”. The Parties agree that the Tenant is named “JE” in the tenancy agreement and the Tenant agrees that this is the name the Tenant usually goes by. On the basis of the tenancy agreement and the Tenant’s evidence of usual name usage, the Parties agree and I will set any orders in the Tenant’s name as “JE” as set out on the cover page of this Decision.

During the hearing the Parties reached an agreement in relation to the end of the tenancy and rents. The Parties were unable to reach an agreement on utilities and this dispute will therefore be determined below. As the tenancy has not yet ended I dismiss the claim for the Landlord to retain the security deposit will leave to reapply after the end of the tenancy.

Agreed Facts

The tenancy began under written agreement started on August 25, 2018. At the outset of the tenancy the Landlord collected \$2,750.00 as a security deposit. Rent of \$5,500.00 is payable on the first day of each month. The Tenant did not pay the total rent of \$16,500.00 due for February, March and April 2019.

Settlement Agreement

The Parties mutually agree as follows:

- 1. The tenancy will end at 1:00 p.m. on April 30, 2019;**
- 2. The Tenant owes the Landlord \$16,500.00 in unpaid rent for February, March and April 2019, inclusive; and**
- 3. These terms comprise the full and final settlement of all aspects of this dispute for both Parties.**

The Parties confirm that this agreement was made on a voluntary basis and that the Parties understand the nature of the full and final settlement of this matter.

Section 63(2) of the Act provides that if the parties settle their dispute during dispute resolution proceedings, the settlement may be recorded in the form of a decision or order. Given the mutual agreement reached during the Hearing, I find that the Parties have settled their dispute as recorded above. In order to give effect to the agreement I grant the Landlord an order of possession effective 1:00 p.m. on April 30, 2019. I also grant the Landlord a monetary order for \$16,500.00. As the tenancy is ending and as the Tenant's claims in relation to locks and access are only relevant to an ongoing tenancy I dismiss these claims.

Remaining Issue to be Decided

Is the Landlord entitled to the monetary amount claimed for unpaid utilities?

Are the Parties entitled to recovery of their filing fees?

Background and Evidence

The Parties agree that the tenancy agreement requires the Tenant to pay the cost of water consumption/utilities. The Parties confirm that the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent and utilities (the "Notice"). The Parties confirm that this Notice sets out that the Tenant failed to pay utilities of \$598.76 following written demand on January 18, 2019.

The Landlord states that no demand letter was sent to the Tenant. The Landlord provides a copy of a bill dated January 18, 2019 for \$598.76 that includes both water costs and interest and the Parties agree that this copy was provided to the Tenant with the Landlord's evidence package for this dispute. Although the bill indicates that the amount is in relation to "prior year utilities", the Landlord states that the amount is for the period September 2018 to January 2019. The Landlord does not know the exact dates that the bill covers. The Tenant concedes that they are familiar with the usual requirements to pay water bills quarterly but questions the actual dates that the bill covers.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that costs being claimed have been incurred or established. Given the lack of detail for the water bill in relation to the period covered but considering that the Tenant would reasonably expect a quarterly bill and given that the tenancy started on August 25, 2018 I find that the Landlord has substantiated on a balance of probabilities that the bill covers the water consumption for the period starting August 25, 2018 to January 18, 2019 inclusive. Since the dates for calculating the interest on the bill cannot be determined I find therefore that the Landlord is only entitled to the water consumption amount of **\$596.49**. I include this amount in the monetary order for a total amount of **\$17,096.49**. As the primary aspects of the dispute have been settled by mutual agreement I decline to award either Party with recovery of their filing fees.

Conclusion

The Parties have settled the dispute in relation to the end of the tenancy and rents.

I grant the Landlord an order of possession effective 1:00 p.m. on April 30, 2019. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I grant the Landlord a monetary order under Section 67 of the Act for **\$17,096.49**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: April 12, 2019

Residential Tenancy Branch