



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR MNR CNR FF

Introduction

This hearing was a cross-application by the tenant and the landlord.

The tenant applied to cancel a Notice to End tenancy for unpaid rent and utilities. In particular the landlord issued a Notice to end for unpaid utilities for the month of December, in the amount of \$139.34. The tenant disputes the notice as the tenancy allegedly includes utilities in the rent.

The landlord's application followed the tenants and is seeking an order of possession for unpaid rent for the month of February, a monetary order to recover rental arrears and arrears for utilities, and is inclusive of recovery of the filing fee associated with this application.

Both the landlord and the tenant participated in the conference call hearing, and each gave testimony and provided evidence under solemn affirmation.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to an order of possession?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

After considerable discussion the undisputed facts before me are as follows:

The tenants state, and the landlord agrees that the tenants are responsible for rent in the amount of \$700 per month. Therefore, rent in the amount of \$700 is payable in advance on the first day of each month. The tenant failed to pay rent in the months of February 2009, and on February 02, 2009 the landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant has further failed to pay rent for the month of March 2009. The tenants agree to vacate the rental unit by March 15, 2009, and agree to pay all their rental arrears owing.

The matter of utilities remains in dispute between the parties. The tenants claim that they have a tenancy agreement which stipulates that utilities are inclusive in the rent. The landlord disputes the tenant's assertions, yet, neither the landlord nor the tenants have an original, a copy or access to any tenancy agreement between the two parties.

Analysis

In the absence of any evidence and on the preponderance of probabilities I find for the tenants in respect to the matter of the utilities. I prefer the tenant's testimony that utilities are included in the rent, and therefore, the notice to end Tenancy for unpaid utilities dated January 18, 2009 is CANCELLED.

Based on the testimony of both parties I find that the tenant was served with a notice to end tenancy for non-payment of rent dated February 2, 2009 and I find the notice to be valid. The tenant has not paid the outstanding rent for February and has not applied for dispute resolution to dispute this notice to end tenancy for unpaid rent and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, of January 28, 2009.

Based on all the above facts I find that the landlord is entitled to an order of possession, and in compliance with the parties' agreement the order will be effective March 15, 2009.

As for the monetary order, I find that the landlord has established a claim for \$700 in unpaid rent for February. The landlord is also entitled to one-half (1/2) month's rent for March, 2009 in the amount of \$350. I also grant the landlord recovery of the \$50 filing fee from the tenants, for a claim to the landlord in the quantum of **\$1100**.

Conclusion

I grant an Order of Possession to the landlord effective March 15, 2009. 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 an order under section 67 for the amount of \$1100. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated March 02, 2009