



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNDC, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent and Utilities, a monetary Order for unpaid rent and utilities, a monetary order for money owed or compensation for damage or loss; and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. At the hearing the Landlord withdrew the application for an Order of Possession, as the rental unit has been vacated.

The Landlord stated that she personally served each Tenant with copies of the Application for Dispute Resolution and Notice of Hearing on July 13, 2011. In the absence of evidence to the contrary, I accept that the Tenants were served with notice of this hearing and the hearing proceeded in the absence of the Tenants.

The Landlord submitted several documents to the Residential Tenancy Branch however she was unable to serve copies of those documents to the Tenants. As these documents were not served on the Tenants in accordance with rule 3 of the Residential Tenancy Branch Rules of Procedure, these documents were not considered when making a determination in this matter.

The Landlord was given the opportunity to provide oral evidence at the hearing on issues that were relevant to the matters in dispute at these proceedings. She was not permitted to discuss issues that were not related to issues in dispute at these proceedings.

At the hearing on August 08, 2011 the Landlord applied to amend her Application for Dispute Resolution to include a claim for loss of revenue for the month of August of 2011. The Landlord's request to amend the Application for Dispute Resolution was denied, because she failed to amend the Application for Dispute Resolution prior to the date of this hearing.

As the Tenants were not notified of the Landlord's intent to seek compensation for loss of revenue from August of 2011, I find that it would be unfair to amend the Application for Dispute Resolution at the hearing, in the absence of the Tenants. I find it entirely possible that the Tenants may have attended this hearing if they knew the Landlord was

seeking compensation for unpaid rent from August of 2011 and I find that it would be unfair to the Tenants to allow this amendment at this point in the proceedings. The Landlord was advised that she has the right to file another Application for Dispute Resolution in which she claims compensation for loss of revenue.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary Order for unpaid rent and/or utilities and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord stated that this tenancy began on April 15, 2011 and that the Tenants were required to pay monthly rent of \$800.00 on the first day of each month plus 40% of the utility bills.

The Landlord stated that she personally served the male Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of July 12, 2011, on July 03, 2011. The Landlord stated that the Tenants did not pay any rent for July of 2011.

The Landlord stated that the Tenants also owe \$96.00 in utilities, which is 40% of the most recent hydro and gas bills. The Landlord was unable to provide the precise amount of the hydro or the gas bill, neither of which was submitted to the Residential Tenancy Branch or served upon the Tenants as evidence for these proceedings.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants entered into a tenancy agreement with the Landlord that requires the Tenants to pay monthly rent of \$800.00 on the first day of each month and to pay 40% of the utility bills for the residential complex.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants did not pay rent for July of 2011. As they are required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenants must pay \$800.00 in outstanding rent to the Landlord.

When making a claim for compensation the party making the claim has the burden of proving their claim. Proving a claim includes establishing the precise amount of money that is owed. In addition to establishing that the Tenants must pay a portion of utility charges for the residential complex, the Landlord must also accurately establish the amount of any outstanding utility bills.

In these circumstances, I find that the Landlord provided insufficient evidence to establish that the Tenant owes \$96.00 in utility charges. In reaching this conclusion, I was strongly influenced by the absence of documentary evidence that establishes the hydro and gas charges that are currently owing. I was further influenced by the Landlord's inability to state the precise amount of those bills. In the absence of evidence that establishes, with reasonable certainty, the amount of the hydro and gas bills, I find that I have insufficient evidence to conclude that the Tenants owe \$96.00. Although the Landlord testified that the Tenants portion of these bills is \$96.00, I find I have insufficient evidence to conclude that her calculations are accurate. On this basis I dismiss the Landlord's claim for compensation for unpaid utilities.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenants for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$850.00, which is comprised of \$800.00 in unpaid rent from July of 2011 and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount of \$850.00. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia 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 *Residential Tenancy Act*.

Dated: August 08, 2011.

Residential Tenancy Branch