

## **DECISION**

**Dispute Codes**      OPR, MNR, FF, CNR, MNDC, RR

### **Introduction**

This hearing dealt with applications from the landlord and the tenants pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to be allowed to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover the filing fee for their application from the landlord pursuant to section 72; and
- other unspecified remedies.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant who attended the hearing (the tenant) confirmed the landlord's testimony that the landlord posted the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenants' door at 9:15 a.m. on August 19, 2011. The tenant confirmed that the tenants received a copy of the landlord's dispute resolution hearing package provided to them on September 8, 2011. The landlord confirmed receiving a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on August 30, 2011. I am satisfied that the above documents and the landlord's written evidence were served to the parties.

At the commencement of the hearing, the tenant testified that she and Tenant MP have vacated the rental unit although they have not yet provided the keys to the landlord. She said that Tenant KS was planning to vacate the premises by the end of the week of the hearing.

### **Issues(s) to be Decided**

Are the tenants entitled to cancel the landlord's notice to end tenancy? Is the landlord entitled to end this tenancy for unpaid rent and utilities and to obtain an Order of

Possession for unpaid rent and utilities? Is the landlord entitled to a monetary award for unpaid rent and utilities? Are the tenants entitled to a monetary award for losses arising out of this tenancy? If this tenancy were to continue, are the tenants entitled to reduce their rent for services or facilities agreed upon but not provided by the landlord? Are either of the parties entitled to recover their filing fees for their applications from the other parties?

### Background and Evidence

This periodic tenancy commenced by way of two separate tenancies on June 1, 2010. One of these tenancies was with Tenant BS and MP; the other tenancy was with Tenant KS. Total monthly rent for the two tenancies, signed by all three tenants and the landlord, was \$750.00 plus utilities. The landlord continues to hold the \$187.50 security deposit paid by Tenant KS on April 1, 2010 and \$250.00 paid by Tenants BS and MP on June 1, 2010.

The landlord's 10 Day Notice identified \$2,958.97 in unpaid rent and \$1,459.81 in unpaid utilities as of August 19, 2011. The parties agreed that no portion of these amounts have been paid by the tenants since the 10 Day Notice was issued.

The landlord applied for a monetary award for unpaid rent and utilities of \$4,418.78. The landlord included in the application for dispute resolution a number of detailed breakdowns of the monetary award requested for the months involved, which resulted in higher amounts than that identified in their original application.

As of May 1, 2011, the landlord claimed that Tenant KS owed \$56.54. By September 2011, this amount had increased to \$1,685.27 in the landlord's claim for a monetary award.

The landlord's application for dispute resolution indicated that Tenants BS and MP were last current with their rent and utilities on November 30, 2010. Since then, the landlord provided a breakdown of \$3,714.51, owed by these tenants as of September 2011.

In their original application for dispute resolution, the tenants requested a monetary award of \$5,000.00, although they provided no details or breakdown of how they arrived at this amount. They amended their application prior to the hearing to provide more detail regarding names and addresses. The tenants did not provide any written evidence in support of their application.

### Analysis - Order of Possession

The tenants failed to pay any of the outstanding rent or utilities identified in the 10 Day Notice within five days of receiving the 10 Day Notice. Although the tenants applied for dispute resolution pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice, they did not dispute that there was rent and utilities owing from this tenancy.

The landlord testified that the difference between the amount the tenant was claiming was owed by Tenant KS (\$1,542.64 as of September 1, 2011) and the amount claimed by the landlord (\$1,608.27 as of September 1, 2011) was \$65.63. The landlord testified that the difference between the amount the tenant was claiming was owed by Tenants BS and MP (\$3,446.18 as of September 1, 2011) and the amount claimed by the landlord (\$3,560.51 as of September 1, 2011) was \$114.33. Although the tenant disputed these calculations, claiming that the difference was more than the landlord was alleging, the tenant did not dispute that rent and utilities were outstanding from this tenancy.

Based on the evidence before me, two-thirds of the tenants have vacated the premises and the remaining tenant is apparently planning to leave shortly. I find that the tenants have not paid outstanding rent or utilities for a considerable portion of this tenancy and, as such, I dismiss the tenants' application to cancel the landlord's 10 Day Notice without leave to reapply. I find that the landlord is entitled to an Order of Possession to take effect at 1:00 p.m. on September 24, 2011. If the tenants do not vacate the rental unit by that time and date, the landlord may enforce this Order in the Supreme Court of British Columbia.

### Analysis – Monetary Awards

I find that the tenants did not supply any written or oral evidence in support of their application for a monetary award. As such, I dismiss their application for a monetary award without leave to reapply. As this tenancy is ending on September 24, 2011, I also dismiss the tenants' application to reduce their rent without leave to reapply. As the tenants' application has been dismissed in its entirety, they bear their own costs of filing their application.

Based on a balance of probabilities, I find the detailed written summaries and supporting written evidence provided by the landlord far more compelling and convincing than the very limited oral testimony of the tenant. At the hearing, the tenant offered little that was relevant to the monetary issues before me. Her main oral evidence involved an energy audit the tenants had requested. The tenant testified that the landlord initially agreed to conduct this audit, but later failed to do so. Shortly after

commencing her oral testimony, the tenant said that she had nothing further to say as she wanted to have nothing further to do with this tenancy or the proceedings regarding this tenancy.

In considering the landlord's application for a monetary award, I find that the tenancies with Tenant KS and with the other two tenants were essentially treated as two separate tenancies for the purposes of the calculation of rent and utilities owing and paid, as well as the security deposit held by the landlord. Consequently, I have considered the landlord's application for a monetary award as essentially two connected applications. I provide the following two calculations for the monetary awards I issue in the landlord's favour.

#### Analysis – Monetary Award Involving Tenant KS

In the absence of specific evidence contesting the landlord's calculation of the amount owed by Tenant KS as of September 1, 2011, I find that the landlord is entitled to her claim of \$1,608.27 for unpaid rent and utilities from Tenant KS. In coming to this determination, I dismiss the landlord's claim for unpaid utility bills of \$25.33 and \$51.67 for September 2011 from Tenant KS with leave to reapply. I do so because these bills had not yet been charged or invoiced to the landlord at the time of this application.

Although the landlord's application does not seek to retain Tenant KS's security deposit of \$187.50, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain Tenant KS's security deposit in partial satisfaction of the monetary award. No interest is payable over this period. As the landlord has been successful in the landlord's application for dispute resolution, I also allow the landlord to recover half of the filing fee for this application from Tenant KS.

#### Analysis - Monetary Award Involving Tenants BS and MP

On a balance of probabilities, I find that the landlord's evidence regarding the outstanding rent and utilities owed by Tenants BS and MP was detailed and specific. Tenant BS's oral evidence at the hearing that the landlord's summaries and calculations were incorrect lacked details. She did not contest specific rents or utility bills owing or specific payments made at the hearing. As noted above, the tenants entered no written evidence.

I find that the landlord is entitled to a monetary award from Tenants BS and MP in the amount of \$3,560.51, the amount of rent and utilities owing as of September 1, 2011. I dismiss the landlord's claim for unpaid utility bills of \$103.34 and \$50.66 for September 2011 from Tenants BS and MP with leave to reapply as these bills had not yet been charged or invoiced to the landlord at the time of this application.

Although the landlord's application does not seek to retain the \$250.00 security deposit from Tenants BS and MP, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain this security deposit in partial satisfaction of the monetary award. No interest is payable over this period. As the landlord has been successful in her application for dispute resolution, I also allow the landlord to recover half of the filing fee for this application from Tenants BS and MP.

#### Conclusion

I dismiss the tenants' application in its entirety without leave to reapply.

As the tenants' application to cancel the 10 Day Notice is dismissed, this tenancy will end on September 24, 2011 and the landlord is provided with a formal copy of an Order of Possession effective at 1:00 p.m. on September 24, 2011. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue two sets of monetary Orders in the landlord's favour in the following terms for unpaid rent and utilities, recovery of the landlord's filing fee for the application, less the retained values of the tenants' security deposits:

#### Monetary Order Involving Tenant KS

Item	Amount
Unpaid Rent and Utilities as of September 1, 2011	\$1,608.27
Less Security Deposit	-187.50
Recovery of Filing Fee for this application	25.00
<b>Total Monetary Order</b>	<b>\$1,445.77</b>

#### Monetary Order Involving Tenants BS and MP

Item	Amount
Unpaid Rent and Utilities as of September 1, 2011	\$3,560.51
Less Security Deposit	-250.00
Recovery of Filing Fee for this application	25.00
<b>Total Monetary Order</b>	<b>\$3,335.51</b>

The landlord is provided with the above sets of Orders in the above terms and the respective tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.