



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was reconvened from the direct requires proceedings as set out in the Interim Decision dated March 18, 2019 in response to an application and amended application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent and utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

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

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on June 1, 2018. The Landlord who attended the hearing is the Landlord on the agreement. At the outset of the tenancy the Landlord collected \$1,000.00 as a security deposit. Rent of \$1,500.00 is payable on the first day of each month. The Tenant did not pay rent on February 1, 2019 and has paid no rent since. The tenancy agreement requires the

Tenant to pay 60% of the hydro bill. The Landlord gave the Tenant copies of the hydro bills for the period October 17, 2018 to March 31, 2019. The Tenant has not paid the utilities for this period in the amount of \$1,895.11. The Tenant has not moved out of the unit.

The Landlord states that on February 25, 2019 the Tenant was served with a 10 day notice to end tenancy for unpaid rent (the "Notice") by posting the Notice on the door of the unit. The Landlord states that this service was witnessed and provides a copy of a signed proof of service. The Tenant states that the Tenant was in the hospital at the time the Landlord states that the Notice was served. The Tenant states that the Tenant's husband was at the unit at the time and said nothing to the Tenant about the Notice. The Tenant did not dispute the Notice.

The Landlord claims the unpaid utilities and unpaid rent for February, March and April 2019 of \$4,500.00. The Tenant waives her right to return of the overpaid amount of \$250.00 for the security deposit and agrees to have it set off against the amounts owed to the Landlord.

Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent the tenant must, within five days, either pay the full amount of the arrears indicated on the notice or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. Based on the Landlord's supported evidence and considering the Tenant's evidence that her husband was at the unit at the time the Landlord states that the Notice was served, I find on a balance of probabilities that the Tenant was served with the Notice. As the Tenant did not dispute the Notice and did not pay the arrears, I find that the Notice is valid and that the Tenant must move out of the unit.

Section 55(2) of the Act provides that where 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, a landlord may request an order of possession. As the Tenant has not moved out of the unit and as the Landlord has claimed an order of possession I find that the Landlord is entitled to an order of possession.

Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Based on the agreed facts that the Tenant has not paid the rent for February 2019 and onward I find that the Landlord has substantiated an entitlement to unpaid rent of **\$4,500.00**.

Section 7 of the Act provides that where a tenant does not comply with the tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Based on the agreed facts that the tenancy agreement requires the Tenant to pay 60% of the hydro bills, that the Landlord gave the Tenant copies of the hydro bills for the period October 17, 2018 to March 31, 2019 and that the Tenant did not pay the hydro for this period, I find that the Landlord has substantiated an entitlement to **\$1,895.11** in unpaid utilities.

As the Landlord's application has been successful I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$6,495.11**. Based on the Tenant's agreement I deduct the total security deposit plus zero interest of **\$1,000.00** from the Landlord's entitlement leaving **\$5,495.11** owed to the Landlord.

Conclusion

I grant an Order of Possession to the Landlord. 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 order that the Landlord retain the **deposit** and interest of \$1,000.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$5,495.11**. 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: May 09, 2019

Residential Tenancy Branch