



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-DR, MNRL, MNU-DR, FFL

Introduction

This hearing was scheduled to convene at 11:00 a.m. on March 16, 2023 concerning an application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent and utilities and to recover the filing fee from the tenant for the cost of the application.

The landlord company was represented at the hearing by an agent, who gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant joined the call.

The landlord's agent (the landlord) testified that the tenant was served with the Notice of Dispute Resolution hearing package by registered mail on February 16, 2023 and has provided a photograph of the registered mail envelope and the Registered Domestic Customer Receipt. I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

The landlord also testified that the landlord's evidence was served to the tenant with the Notice of Dispute Resolution hearing package, with the exception of late evidence uploaded to the Residential Tenancy Branch site, and an Amendment to the application, which were left in the tenant's mailbox. The Amendment was filed on February 16, 2023 and seeks an additional monetary amount for rent and utilities since the application was originally filed.

Although serving a Landlord Request to Amend a Dispute Resolution Application should not be served by leaving it in the tenant's mailbox, the landlord is entitled to make that additional claim to the existing claim orally, considering the time it takes for a hearing to be scheduled.

During the course of the hearing the landlord testified that a hearing was scheduled in February, 2023 concerning an application made by the tenant. The tenant didn't attend, and the application was dismissed. I referred to the Decision of the director to ensure that I do not make any findings or orders that have already been adjudicated upon at the previous hearing. The Decision is dated February 21, 2023 and grants an order of possession in favour of the landlord effective on 2 days notice to the tenant, and a monetary order for unpaid rent up to and including January, 2023 in the amount of \$4,026.60. No order is made with respect to unpaid utilities because Section 55 (1.1) of the *Act* permits monetary compensation to a landlord for unpaid rent.

Since the landlord has an order of possession, I decline to order it again, and I dismiss that portion of the landlord's application.

All evidence of the landlord has been reviewed and is considered in this Decision.

Issue(s) to be Decided

The issues remaining to be decided are:

- has the landlord established a monetary claim as against the tenant for additional unpaid rent?
- has the landlord established a monetary order for unpaid utilities?

Background and Evidence

The landlord testified that this month-to-month tenancy began on December 1, 2021 and the tenant still resides in the rental unit. Rent in the amount of \$2,200.00 is payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1,100.00 and collected a pet damage deposit in the amount of \$1,100.00 on January 1, 2022. Both deposits are still held in trust by the landlord. The rental unit is the upper level of a house, and a basement suite is also tenanted; the landlord does not reside on the property. A copy of the tenancy agreement has been provided for this hearing.

The landlord further testified that on January 19, 2023 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) by leaving it in the tenant's mailbox. A copy of the Notice has been provided for this hearing and it is dated January 19, 2023 and contains an effective date of vacancy of January 31, 2023. The reason for issuing it states that the tenant failed to pay rent in the amount of \$4,370.02 that

was due on January 1, 2023 and unpaid utilities in the amount of \$506.51 following written demand on January 1, 2023.

Since the monetary order was issued for unpaid rent to January, 2023, the tenant paid a total of \$5,000.00 in February and March, which the landlord applied to December and January rent. However, unpaid rent has accumulated, with partial payments made by the tenant, as well as unpaid utilities. The landlord has provided a Monetary Order Worksheet setting out the following claims, totaling \$4,727.48:

- \$1,496.51 for February 2023 rent;
- \$2,200.00 for March 2023 rent;
- \$73.52 for 50% of a Fortis bill November 17, 2022
- \$415.36 for 50% of BC Hydro bill Dec 19, 2022
- \$91.15 for 50% of Fortis bill Dec 19, 2022
- \$103.62 for 50% of Fortis bill Jan 19, 2023;
- \$258.02 for 50% of BC Hydro bill Feb 16, 2023; and
- \$89.31 for 50% of Fortis bill Feb 15, 2023.

The tenancy agreement does not include any utilities, and the occupants in the lower level do not pay utilities according to their tenancy agreement. Therefore, the tenant pays 50% of the Fortis gas bill and BC Hydro bill and the landlord covers the other 50%. Several utility bills have been provided for this hearing.

Analysis

The landlord was successful in obtaining an order of possession in February, 2023. The tenant must be served with the order which may be filed for enforcement in the Supreme Court of British Columbia. The landlord does not require me to issue another such order, and I dismiss that portion of the landlord's application.

I have reviewed all of the landlord's evidentiary material, and I accept the undisputed testimony of the landlord that the tenant is in arrears of rent the sum of \$1,496.51 for February, 2023 and the tenant has paid no rent for this month. I find that the landlord has established a monetary claim for unpaid rent, in addition to the monetary order made by the director on February 21, 2023, in the amount of **\$3,696.51** to March, 2023.

I also accept the undisputed testimony of the landlord that the tenant is responsible for 50% of the utilities. Demand letters have been issued to the tenant, and the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities sets out unpaid utilities as well as unpaid rent. I have also reviewed the utility bills provided for this hearing by the

landlord, and I find that the landlord has established a claim of **\$1,030.98** for unpaid utilities.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the **\$100.00** filing fee.

I grant a monetary order in favour of the landlord as against the tenant in the amount of **\$4,827.49**. The tenant must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, the landlord's application for an order of possession is hereby dismissed.

I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$4,827.49**.

This order is final and binding and may be enforced.

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: March 16, 2023

Residential Tenancy Branch