



Dispute Resolution Services

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

Decision

Dispute Codes: CNR OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with applications by the tenant and the landlord. The tenant applied to dispute a notice to end tenancy as well as for monetary compensation for loss under the Act, regulation or tenancy agreement. The landlord applied for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. In the hearing, the landlord agreed to reduce their monetary claim to \$4200, representing the balance of unpaid rent owing.

The tenant, the landlord and counsel for the landlord participated in the teleconference hearing.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to the monetary amount claimed for unpaid rent?

Is the tenant entitled to monetary compensation as claimed?

Background and Evidence

a) Undisputed Facts

The tenancy began on or about May 1, 2005. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$500. The tenants entered into a new written tenancy agreement beginning May 1, 2007, with a monthly rent of \$1000 payable in advance on the first day of each month.

One of the clauses of the tenancy agreement sets out that in regard to the payment of hydro, the tenant was responsible for paying 100 percent of the hydro for the house, and the landlord would then reimburse the tenant 30 percent of the hydro costs, representing the hydro use by the tenant in the downstairs suite. From May 1, 2007 through May 2009 the hydro account for the entire house was in the tenant's name, and the tenant was accountable to BC Hydro for 100 percent of the hydro costs. The landlord did not reimburse the tenant for any portion of the hydro for this two-year period. On or about June 16, 2009 the landlord reconnected the hydro for the house in his own name.

b) The Landlord's Application

The tenant failed to pay the full rent owing for several months, beginning February 2009. As of June 1, 2009 the tenant owed \$4200 in unpaid rent, and on June 12, 2009 the landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant did not make any payment on the outstanding rent. In the hearing the tenant did not dispute the landlord's evidence regarding the amounts of unpaid rent owing. The landlord has claimed \$4200 in unpaid rent and seeks an order of possession pursuant to the notice to end tenancy for unpaid rent.

c) The Tenant's Application

The tenant applied to cancel the notice to end tenancy for unpaid rent on the basis that the landlord owes the tenant \$2678.40 for hydro, \$965 for appliances and \$500 in additional compensation.

In regard to the hydro, the tenant calculated that the hydro was \$279 per month, for 24 months from May 2007 to May 2009, for a total of \$6696. The tenant stated that the hydro ought to be split 60 percent for the upstairs suite and 40 percent for the downstairs suite, based on the square footage of both suites. The tenant has claimed \$2678.40 representing 40 percent of the hydro for the downstairs suite for the time period in question.

In regard to the additional \$500 compensation claimed, the tenant stated that he was unable to pay 100 percent of the hydro, and as a result the hydro was cut off. For two

weeks at the beginning of June 2009 the tenant was forced to live in his camper in his driveway, until the landlord reconnected the hydro for the rental unit in his own name.

In regard to the amount claimed for appliances, the tenant stated that he asked the landlord to replace appliances that were not working, and when the landlord did not do so the tenant purchased used appliances to replace the broken ones. The tenant purchased the appliances privately and wrote out his own receipts to indicate the purchase prices and dates.

The landlord's response to the tenant's application was as follows. The landlord had a verbal agreement with the tenant that the landlord would not increase the rent, and in exchange the tenant would pay 100 percent of the hydro. The tenant never provided the landlord with any hydro bills and did not submit hydro bills as evidence in the hearing. The tenant should not be entitled to compensation for the two weeks without hydro, as it was the tenant's actions that caused the hydro to be shut off. The tenant never notified the landlord of any problems with the appliances, and the landlord never approved the tenant's purchase of replacement appliances. The receipts show that some of the appliances were purchased two years ago, and yet the tenant did not ask for reimbursement for these items until now.

Analysis

A tenant may not withhold rent because of a perceived debt owed by the landlord to the tenant. In this case the tenant owed rent, the landlord served the tenant with a notice to end tenancy for unpaid rent, and the tenant did not pay the outstanding amount within 5 days of having been served with the notice. I therefore find that the notice to end tenancy is valid and the landlord is entitled to an order of possession.

The landlord is also entitled to \$4200 in unpaid rent and recovery of the \$50 filing fee for the cost of his application.

As for the tenant's monetary claim, I find as follows. Even if the landlord and tenant had agreed in writing not to raise the rent in exchange for the tenant paying 100 percent of

the utilities, I would have found that such an agreement was unconscionable and unenforceable. A landlord may not raise the rent without giving notice in the prescribed form at least three full months before the increase is to take effect, and the proposed increase must be in the prescribed amount. Further, a landlord cannot require a tenant to pay for utilities that the tenant is not using. The tenancy agreement in this case sets out that the tenant is responsible for 70 percent of the utilities, and the landlord is therefore responsible for reimbursing 30 percent of the utilities owed from May 2007 to May 2009. However, I find that the tenant has not provided adequate evidence to establish the exact amount of the hydro bills for that time period, and I therefore dismiss that portion of the tenant's application with leave to reapply. If the landlord and tenant are unable to come to an agreement regarding the amount of reimbursement the landlord owes the tenant for 30 percent of the hydro from May 2007 to May 2009, the tenant may reapply, and provide supporting evidence, to claim this amount.

In regard to the tenant's claim for compensation for two weeks without hydro, I accept the tenant's testimony that he was unable to pay the hydro bill because the landlord would not reimburse the tenant for part of the hydro costs. The landlord's evidence was that he did not pay the tenant any hydro costs because of the verbal agreement he had with the tenant. If there were such an agreement between the landlord and the tenant, then that agreement would have been unconscionable. I therefore find that the tenant was deprived of hydro and use of the rental unit for two weeks due to the landlord's improper actions, and the tenant is entitled to compensation of \$500 representing half a month's rent.

In regard to the tenant's application for appliances, I find that the tenant did not provide the landlord with any written requests for replacement or repair of the appliances in question, and the tenant did not provide adequate evidence to establish that the appliances needed to be replaced. I therefore dismiss that portion of the tenant's application without leave to reapply.

As the tenant's application was predominantly unsuccessful, I find that the tenant is not entitled to recovery of the filing fee for the cost of his application.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant. The tenant must be served with the 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.

The landlord is entitled to \$4200 in unpaid rent, less \$500 in compensation owed by the landlord to the tenant, for a total of \$3700. I order that the landlord retain the deposit and interest of \$517.70 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$3182.30. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated September 17, 2009.