



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, RP, MNDC, FF

Introduction

This hearing dealt with the tenants' request to cancel a Notice to End Tenancy for Cause, for repairs to the rental unit, and recovery of the filing fee. The tenants' evidence also included a request for compensation for damage or loss under the Act, regulations and tenancy agreement. Both parties appeared at the hearing and were provided the opportunity to be heard.

Issues(s) to be Decided

1. Mutual agreement to end the tenancy.
2. Have the tenants established an entitlement to compensation under the Act, regulations or tenancy agreement, and if so, the amount?
3. Award of the filing fee.

Background and Evidence

Based on undisputed testimony of both parties, I find that the tenancy commenced October 1, 2007 and the tenants were required to pay rent of \$1,100.00 plus \$281.00 for utilities on the 1st day of the month. Utilities are in the name of the landlord and the tenants pay the landlord utilities with their rent payments. Starting in December 2008, the landlord required the tenants to pay \$1,150.00 in rent. The amount of utilities required by the landlord has changed from time to time and currently the tenants are paying \$511.00 per month for utilities.

The written tenancy agreement was not provided as evidence; however, the landlord was asked to read from the tenancy agreement during the hearing in an effort to understanding the terms of the tenancy. With respect to utilities, the tenancy agreement does not provide for increases based on consumption, number of occupants or rate adjustments. Rather, the landlords were of the belief that the number of increased occupants and changes in actual utility costs entitled the landlord to increase the amount of utilities charged to the tenants. The tenants are seeking compensation for overpaying utilities (hydro and water) in the total amount of \$1,437.00.



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I also heard the parties had a verbal agreement that the tenants would maintain the yard that was not part of the tenancy agreement. The tenant acknowledged mowing the grass but not watering it. The landlords, not satisfied with the yard maintenance performed by the tenants, hired a gardener and increased the rent by \$50.00.

I heard that since the tenancy agreement was signed by the parties in 2007, the tenancy agreement was not amended by the parties, nor was a Notice of Rent Increase served upon the tenants. Nor have the parties entered into any other written tenancy agreement.

The landlords served the tenants with a *1 Month Notice to End Tenancy for Cause* (the Notice) on August 5, 2009 with an effective date of September 15, 2009. The tenants disputed the Notice within the time limits permitted under the Act. The landlords claimed to have documentary evidence to support their allegations against the tenants; however, the landlords did not provide the evidence to the Residential Tenancy Branch and did not serve their evidence upon the tenants prior to the hearing.

The tenants' claim for compensation also included a request for return of their security deposit and one-month of free rent as the tenants were of the position the landlords wished to use their rental unit for their own living space. The landlords were of the position the tenants have damaged the rental unit and denied the landlords intended to use the rental unit for their living space after the tenants vacated.

After hearing mostly disputed verbal testimony concerning the reasons given by the landlords for issuing the Notice to End Tenancy, an attempt was made to facilitate a mutual agreement to end tenancy. The parties were able to reach a mutual agreement to end the tenancy effective October 31, 2009. The tenants also agreed to smoke away from the house in good weather and ensure windows and doors they have control of are closed when weather does not permit them to smoke away from the house.

It was determined the request for repairs by the tenants related to electrical consumption of the hot water tank but that the tenants are provided with sufficient hot water.

Analysis

I accept the mutual agreement reached between the parties during the hearing to end the tenancy October 31, 2009 and I make it my order to be binding upon each party. For certainty, the tenancy shall continue until October 31, 2009 and I enclose for the landlords an Order of Possession effective October 31, 2009.



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The amount of rent payable by a tenant is set by the terms of the tenancy agreement. A tenancy agreement may be amended with consent of both parties, except a tenancy agreement cannot be amended to provide for rent increases or termination of services or facilities. Rent may be increased provided the requirements of Part 3 of the Act are met. Part 3 of the Act requires the landlord to serve a Notice of Rent Increase upon a tenant three months before the rent increase takes effect and the timing and amount of the increase is limited by the Residential Tenancy Regulation. In this case, I find the landlord increased the rent by \$50.00 without serving a Notice of Rent Increase.

As the landlords were informed during the hearing, it is the landlords' obligation to ensure the tenancy agreement clearly reflects the obligations of the tenants in order to find the terms enforceable. I do not find the agreement between the parties was sufficiently specific with respect to yard maintenance to find the tenants breached their obligation towards yard maintenance. Therefore, the tenants were not required to pay the extra \$50.00 in rent charged by the landlord and the tenants are not entitled to recover that over-payment from the landlord by deducting it from rent owing.

Based on what I have heard, I find that the tenancy agreement essentially required the tenants to pay \$1,100.00 plus \$281.00 for a total monthly payment of \$1,381.00 including utilities. I do not find that utilities were a separate charge to be demanded by the landlord upon receipt of utility bills. Since the tenancy agreement provides for payment of a specific amount for utilities, without a provision that this amount may be subject to change based on utilities consumed or actual costs to the landlord, I do not find the landlord was legally entitled to require the tenants to pay more than that amount without serving a Notice of Rent Increase or entering into a new tenancy agreement signed by all parties. Therefore, I find the tenants have established an entitlement to recover the utilities they have paid in excess of that agreed upon in the tenancy agreement and I grant the tenants their request to recover \$1,437.00 for overpaid utilities.

In recognition that the tenancy is ending October 31, 2009, I authorize the tenants to withhold rent for the month of October 2009 in partial satisfaction of the amounts owing the tenants and provide the tenants with a Monetary Order calculated as follows:

Overpayment of rent (\$50.00 x 10 months)	\$ 500.00
Overpayment of utilities, as claimed	1,437.00
Filing fee	<u>50.00</u>
Sub-total	\$ 1,987.00
Less: October 2009 rent to be withheld (\$1,100.00 + \$281.00)	<u>(1,381.00)</u>
Monetary order	<u>\$ 606.00</u>



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To enforce payment, the tenants must serve the Monetary Order upon the landlords and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

The tenants are not entitled to return of their security deposit at the time of making this application and I dismiss their application for its return. Both parties are encouraged to obtain information concerning the requirements and obligations of each party with respect to security deposit. As information for both parties, I have enclosed *A Guide for Landlords and Tenants in British Columbia*. Either party may contact the Residential Tenancy Branch toll-free or access our web-site for more information.

I also deny the tenant's request for one month of compensation payable under section 51 of the Act as I did not find the tenants had been served with a 2 Month Notice.

Finally, since the hot water tank is working adequately and the issue of utilities has been addressed above, I dismiss the tenants' request for repairs by the landlord.

Conclusion

The tenancy will end October 31, 2009 by mutual agreement. The tenants are entitled to recover overpayment of rent and utilities from the landlords and are authorized to withhold rent for October 2009 in partial satisfaction of the overpayments. The tenants are also provided a Monetary Order in the amount of \$606.00 to serve upon the landlords for the remainder of the overpayment and recovery of the filing fee.

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: September 16, 2009.

Dispute Resolution Officer