Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, MNDC, FF, OPR, MNR, MNSD, MNDC, O

Introduction

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

- an Order of Possession for unpaid utilities pursuant to section 55;
- a monetary order for unpaid utilities and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenants confirmed that they received the landlords' 10 Day Notice posted on their door by the female landlord on February 26, 2012. The tenants also confirmed that they received a second 10 Day Notice for Unpaid Rent on or about March 8, 2012. The female landlord (the landlord) confirmed that the tenants handed the male landlord their 30-day written notice to end this tenancy by March 31, 2012 on February 29, 2012. The female landlord who attended this hearing (the landlord) confirmed that the male landlord received a copy of the tenants' dispute resolution hearing package handed to him on March 5, 2012. The tenants confirmed that they received a copy of the landlords' dispute resolution hearing package sent by the landlord by registered mail on March 7, 2012. I am satisfied that the parties served the above documents to one another in accordance with the *Act*.

At the commencement of the hearing, I noted that the tenants did not need to request more time to dispute the landlords' 10 Day Notice. In addition, the tenants testified that there was no purpose in pursuing their application to cancel the landlords' 10 Day Notice as they were preparing to end their tenancy by March 31, 2012 in accordance with their own written notice to end this tenancy. On this basis, the tenants withdrew their application to cancel the landlord's 10 Day Notice. As the landlord wanted to ensure that the tenants left by March 31, 2012, she said that she was continuing to pursue the landlords' application for an end to this tenancy and an Order of Possession effective March 31, 2012. The tenants did not object to the landlord's request for this Order.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession? Are the landlords entitled to a monetary award for unpaid utilities and losses arising out of this tenancy? Are the tenants entitled to a monetary award for losses arising out of this tenancy or a reduction in rent for services and/or facilities the landlords failed to provide during this tenancy? Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Are either of the parties entitled to recover their filing fees from one another?

Background and Evidence

This periodic tenancy commenced on March 1, 2011. Monthly rent is set at $1,160.00, payable in advance on the first of each month. The landlords continue to hold the tenants' $580.00 security deposit paid on February 19, 2011.

The parties entered conflicting evidence regarding the tenants' responsibility for payment of the electricity and heat for this tenancy. The landlords maintained that the Residential Tenancy Agreement (the Agreement) signed at the commencement of this tenancy required the tenants to pay one-half of the electricity for this property, an amount to be split evenly with the upstairs tenants in this rental property. The current tenants did not move into the upstairs portion of this rental building until August 2011.

The tenants testified that they understood that they were not responsible for the payment of hydro when they signed the Agreement. They also maintained that the provision requiring them to pay 50% of the electricity was added to the Agreement by the landlord(s) after they signed the Agreement. They testified that they were not asked to pay for hydro from the March 1, 2011 start of their tenancy until July 18, 2011, shortly before the current tenants moved into the upstairs rental unit in August 2011. They entered into written evidence a number of emails exchanged mostly with the male landlord with respect to their claim that paying one-half of the hydro for this property

was unfair. They testified that there were 5 occupants in the upstairs rental unit who used far more electricity than the tenants (and their baby) used for their lower rental unit. They entered into written evidence copies of emails that they maintained demonstrated that the male landlord agreed to let them work out the dispute regarding the sharing of the electricity bill with the upstairs tenants. They said that at one point the upstairs tenants agreed to share the electricity bill on the basis of a breakdown of the number of people living in each rental unit. The female tenant testified that this arrangement should have resulted in the tenants becoming responsible for 37.5% of the electricity bill for this property.

The landlords' 10 Day Notice of March 8, 2012 identified $1,220.00 in unpaid rent owing which included $1,160.00 in unpaid rent owing as of March 1, 2012, a $35.00 N.S.F. fee, and a $25.00 late fee. The parties agreed that the tenants have paid this amount owing. The landlords were not pursuing the amounts identified as owing in that 10 Day Notice. The landlord's 10 Day Notice of February 26, 2012 identified $908.47 in hydro utilities owing as of February 22, 2012. The parties agreed that the tenants have not made any further utility payments since they received the landlords' 10 Day Notice of February 26, 2012.

At the hearing, the landlord amended the amount sought in the landlords' application for dispute resolution from $1,580.00 to $908.47 (plus recovery of the landlords' $50.00 filing fee for their application) in recognition of the tenants' payment of the outstanding rent for March 2012. The landlord testified that the requested monetary award of $908.47 was limited to the landlords' attempt to recover unpaid hydro bills owed by the tenants during this tenancy.

The tenants' application for a monetary award of $4,950.00 included:

- an $884.15 reduction in their hydro payments of for the period from September 2011 until the end of their tenancy; and
- a $4,065.85 rent reduction for the landlords' failure to provide them with the services and facilities they were expecting to receive when they entered into this tenancy.

They attached a description of their reasons for seeking these monetary awards to their application for dispute resolution which included the following items:

- *possible illegal electrical work.*
- *washing machine plugged in with extension cord.*
- *constant power shortages and daily breaks, fuses blowing*
- *sparks/small fire in bathroom plug in*
- *no insulation in recently renovated building...*

- *lights dim, fridge/freezer and baseboard heaters stop working...*
- *no fire alarm in suite*
- *never had to pay hydro before...*
- *slander email from property manager...*
- *ignoring complaints since move in March 1, 2011*
- *ignoring repairs needed since move in...*
- *altered tenancy agreement without our consent*
- *loss of quiet enjoyment since September 2011*
- *stress and anxiety due to the above details and more listed in our evidence package...*

Analysis – Order of Possession

As noted above, the tenants committed to vacate the rental premises by March 31, 2012, in accordance with their written notice to end tenancy. I find that this tenancy ends on March 31, 2012, by which time the tenants will have vacated the rental premises. I provide the landlords with a formal copy of an Order of Possession to take effect to be used if the tenants do not vacate the rental premises by March 31, 2012. 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.

Analysis – Landlords' Application for a Monetary Award

I have carefully considered the tenants' oral and written evidence regarding their claim that they should not be held responsible for 50% of the hydro costs for this rental property but should be required to pay a reduced percentage (i.e., 37.5%) based on their share of the total occupants of this rental property. I do not find that the email evidence they provided from their exchanges with the male landlord demonstrate that the male landlord agreed to let them reduce their portion of their hydro bill to the extent that they have requested. I do not find that the male landlord's response that the tenants should work this matter out with the upstairs tenants equates to his agreement that they should be allowed to reduce their portion of their hydro payments below the 50% responsibility noted in the tenants' residential tenancy agreement. Rather, I find that the male landlord wanted his two tenants to discuss this matter and look after their respective hydro payments. The tenants and Witness AS provided conflicting evidence as to whether there was any oral agreement between them in which the upstairs tenants agreed to let the tenants pay a reduced share of the overall hydro bill for this property.

Under these circumstances, I find that the best evidence of the tenants' responsibility for hydro payments is that set out in the signed Agreement requiring them to pay 50% of the hydro bills for this rental property. I attach little weight to the tenants' claim that they

did not think that they were responsible for any hydro payments because they did not receive bills for hydro until July 2011. I find that the tenants should be held responsible for 50% of the hydro bills for this rental property and not the 37.5% that the tenants have requested.

During the hearing, the landlord expressed uncertainty regarding the exact amount of utilities owing as the upstairs tenant, Witness AS, had made some payments. She testified that Witness AS was more informed as to who had made the various payments in the hydro statements she entered into written evidence. At the hearing, the tenants gave undisputed oral testimony that they had made hydro payments of $79.13 on October 20, 2011, $100.00 on November 7, 2011, and $50.00 on December 13, 2011. Witness AS testified that the tenants were correct in their testimony that they made these three hydro payments totalling $229.13. Witness AS and the landlord did not dispute the tenants' claim that the landlords' request for reimbursement of $908.47 in utility bills did not take into account the tenants' three payments of $229.13.

Based on this undisputed evidence from the tenants, supported by the landlord's hydro bills, I find that the landlord's claim of $908.47 should be reduced by the tenants' three hydro payments of $229.13 to $679.34.

At the hearing, the tenants testified that according to their calculations based on their sharing of 37.5% of the hydro bill for this rental property, they still owed $391.19 in hydro for their tenancy. The amount in dispute between the parties then reduces to $288.15, (i.e., the difference between $679.34 and $391.19).

My finding that the tenants are responsible for 50% of the hydro bills for this property would lead to a monetary award to the landlords of $679.34. However, based on the landlord's confusion as to the exact amounts charged and paid for hydro, I am not convinced to the extent necessary that the reduced amount of $679.34 represents an accurate estimate of the tenants' underpayment of their hydro bill. For that reason, I reduce the amount of the landlord's entitlement to a monetary award for unpaid hydro by $100.00 to $579.34 to reflect this lack of clarity and accuracy in the information submitted by the landlords in support of their application for a monetary award for unpaid hydro.

Analysis – Tenants' Application for a Monetary Award

I will consider the tenants' application for a retroactive reduction in rent and utilities as one general application for a reduction in the payments the tenants have made during the course of their tenancy. Some of these claims are overlapping, as, for example, the claim for problems with having to plug their washing machine into an extension cord

covers both their claim for reduced hydro and repairs that were not conducted by the landlords.

A tenant is responsible for checking certain aspects of the facilities they are renting and are not entitled to obtain a reduction in rent if they did not exercise due diligence in that process. I find that some of the items the tenants have identified as grounds for obtaining a reduction in rent would have been apparent when they entered into this tenancy. For example, the problems they identified with the electrical work and the availability of electrical outlets may very well have been visible when the tenants agreed to rent these premises. Similarly, the tenants are not entitled to a reduction in rent because they discover after living in the premises that they do not have insulation.

In considering the tenants' application for a reduction in rent and utilities due to the landlords' failure to resolve the tenants' concerns, I must examine the notice given to the landlord regarding these problems and the interaction between the parties regarding the requests for repairs.

In support of their application for a monetary award, the tenants entered into written evidence copies of emails that they exchanged with the female landlord who acted as the agent of the male landlord (the owner of this property) for the latter portion of this tenancy. These emails demonstrated that by early January 2012, the tenants had been asking for a number of repairs to the rental unit for at least two months. For example, the requested repairs cited in the female tenant's January 3, 2012 email included the following:

- mail box
- gutters
- front door
- kitchen counter
- bathroom door
- laundry room bi-fold door
- connecting the washing machine
- fixing the fireplace.

As outlined below, the female tenant asked for a rent reduction for the landlords' failure to address the above- noted concerns in her email.

> *...My family and I feel that with the above mentioned issues that we have brought up multiple times, (some since the day we moved in) and since they are still to be fixed, we feel that it is only fair that we get a reduction in our rent for some of these are hazardous and are also not the best living conditions and bring the*

> *value of our rental down significantly. We would appreciate it if you could call us after 5pm or email me back anytime to discuss the issues and reduction in rent...*

The female landlord's January 3, 2012 email response committed to commencing the "minor repairs" that needed to be undertaken as soon as possible but advised the female tenant that the male landlord would not agree to any rent reduction.

Based on my review of the undisputed written evidence submitted by the tenants, I am satisfied that the tenants have demonstrated that they were raising concerns about some of the problems associated with the rental unit that the landlords did not address in a timely fashion. However, within a few months of receiving the most detailed of these emails, the female tenant advised the female landlord in the following January 5, 2012 email that the tenants were no longer interested in allowing the landlords access to the rental unit to conduct these repairs:

> *...After looking into my rights with the RTO my family and I have decided that we would prefer you not entering our suite to make 'minor repairs' as you stated this Saturday. We do not feel it is fare or nor do we want to subject our young family to loud construction noise as well as holes being put in the walls creating drywall dust and fumes from the mud, sanding and paint, and not have a temporary reduction in rent for all the inconvenience's and loss of enjoyment within the home. We would prefer for you to make these 'minor repairs' after we vacate the suite in the near future...*
> (as in original)

It appears to me by January 5, 2012 the tenants were seeking a rent reduction for the problems they were encountering with their tenancy and not the repairs that the landlord was willing to undertake.

Under these circumstances, I find that the tenants are entitled to a very limited reduction in rent for facilities agreed to but not provided by the landlords that devalued the worth of their tenancy. I find that many of the items listed in their evidence amount to little more than minor repairs or nuisances that they brought to the landlords' attention relatively late in their tenancy. While these issues no doubt bothered the tenants and devalued to a limited extent the value of their tenancy, I see insufficient basis to award the tenants the major reductions in rent and utilities they have sought in their application for a monetary award. Rather, I find that the tenants are entitled to a $250.00 rent and utilities reduction from August 2011 until December 2011 (i.e., $50.00 per month for the five-month period), an amount which is designed to compensate them for all of the deficiencies, inconveniences and problems they have raised in their application for dispute resolution. I extend this reduction until January 5, 2012, the date when the tenants advised the landlords that they were no longer interested in obtaining their

requested repairs to the rental unit. The pro-rated value of the rent and utilities reduction for January 2012 is $8.00 ($50.00 x 5/31 = $8.00). Prior to August 2011, I see insufficient evidence that the landlords were remiss in attending to the tenants' requests for repairs or remedial action. I find that the tenants are not entitled to any reduction in rent or utilities after January 5, 2012, when they advised the landlords that they were not willing to let them conduct the immediate repairs that the landlords were willing to undertake at that time.

In order to implement this decision, I allow the landlords to retain $321.34 from the tenants' security deposit in satisfaction of the monetary award in the landlords' favour. As both parties were partially successful in their applications, I find that they bear responsibility for their own filing fees.

Conclusion

The landlords are provided with a formal copy of an Order of Possession effective March 31, 2012. 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 a monetary award in the landlords' favour which allows the landlords to recover unpaid utilities less the amount of the tenants' recovery of a portion of their rent and utilities paid during this tenancy.

Item	**Amount**
Tenants' Portion of Unpaid Utilities	$579.34
Less Tenants' Reduction in Rent and Utilities from August 2011 until January 5, 2012 ($50.00 x 5 months + $8.00 = $258.00)	-258.00
Total Monetary Award	**$321.34**

I allow the landlords to retain $321.34 from the tenants' $580.00 security deposit to satisfy the monetary award issued in the landlords' favour in this decision. The remaining value of the tenants' security deposit held by the landlords for this tenancy is now set at $258.66.

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: April 04, 2012

Residential Tenancy Branch