



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR MNDC PSF RR

Introduction

This hearing dealt with an Application for Dispute Resolution filed on February 12, 2013, by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to Order the Landlords to provide services or facilities required by law; and to allow the Tenant reduced rent for repairs, services or facilities agreed upon but not provided.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Preliminary Issues and Procedural Issues

Upon review of the Tenant's application for dispute resolution she confirmed she had made an error in listing the rental unit address as being the downstairs when in fact she rents the upstairs of the house. Both parties agreed to amend the application to show the rental unit address as being the upper floor of the house.

The Tenant requested that her application be amended to deal with a 10 Day Notice to end tenancy which was issued on March 5, 2013. She stated the notice pertains to unpaid utilities which are to be determined in this proceeding. The Landlords confirmed the 10 Day Notice was issued for unpaid hydro. As the matters before me pertain to heating and hydro I find the 10 Day Notice issued March 5, 2013, to be significantly

linked to the Tenant's application; therefore, I amended the Tenant's application to include her request to cancel the 10 Day Notice, pursuant to section 64 (3)(c) of the *Act*.

At the outset of this proceeding the Landlords stated that they were not sure if they could articulate their information properly and/or be able to understand everything because English was their second language. Throughout this proceeding I found the Landlords' use of the English language to be very proficient. I mirrored and rephrased their testimony and asked each participant if they understood what was being said before I proceeded onto to the next issue. At no time during this proceeding did the Landlords or the Tenant indicate that they did not understand what was being said.

Issue(s) to be Decided

1. Should the Tenant's rent be reduced to make it more in line with the market value rent?
2. Is the Tenant required to pay for electricity?
3. Should the 10 Day Notice to end tenancy issued March 5, 2013 be cancelled?
4. Is the Tenant entitled to monetary compensation due to lack of heat in her rental unit?
5. Should the Landlords be ordered to provide the Tenant with daily access to her mail?
6. Should the Landlords be ordered to cease contact with the Tenant's family on matters relating to the tenancy?

Background and Evidence

The Tenant submitted documentary evidence which included, among other things, copies of: the Tenant's letters to the Landlords January 10th and January 28, 2013; a hydro bill; a spreadsheet with temperature readings inside the rental unit; and the tenancy agreement.

The Landlord submitted documentary evidence which included, among other things, copies of: their written statement; heating oil delivery receipts; letter from the Tenant; a receipt for an electric fireplace; and various hydro bills from 2011 and 2012.

The parties confirmed they entered into a written fixed term tenancy agreement that began on October 24, 2012 and is set to end May 1, 2013. Rent is payable on the first of each month in the amount of \$900.00 and on October 31, 2012 the Tenant paid \$450.00 as the security deposit.

The Tenant advised that she viewed the rental unit on September 28, 2012. During that visit she had a conversation with the Landlords about the heat at which time they told her she would not have access to the thermostat and no access to the oil furnace heat.

She said the Landlords told her they were going to install an electric insert into the fireplace and two electric baseboard heaters for her to heat her unit with. The Landlords told her they would pay for the oil for the furnace and she would pay for the electricity to heat her unit. She said she re-confirmed the heating details over the telephone on September 30, 2012.

The Tenant argued that when she arrived at the unit to move in she found the fireplace had been sealed off and she was left with one portable plug in electric heater. She said she had moved all that way and was now stuck without heat. She continuously complained about being cold and finally they gave her a second portable electric heater.

The Tenant stated that the female Landlord was residing out of town during the week so she was primarily dealing with the male Landlord who was residing in the basement. She said that on November 21, 2012 she was so upset with being cold that she called the female Landlord in the presence of the male Landlord. During that telephone conversation the Landlords decided they would turn the oil furnace on for one hour in the morning and again for one hour in the evening to take the chill off enough to allow her heater to try to keep up. This did not work so on November 23, 2012 she asked for a third heater which she received on approximately December 10, 2012. She said she complained almost daily about the lack of heat. She went out of town on December 24, 2012 and returned in early January to receive the extremely high hydro bill which she feels she should not have to pay.

The Landlords stated that the house was built in the late 1970's and is two stories with approximately 1200 square feet on each floor. They confirmed they had a conversation with the Tenant September 28th and September 30, 2012, as discussed by the Tenant. They did lock out or disconnect the oil furnace thermostat in the Tenant's unit. The Tenant does not have access or control of the oil furnace and they have supplied her with three portable electric heaters as she stated. They confirmed they initially told her they would install two baseboard heaters and a fireplace insert; however, they changed their mind after looking into the specifications. They confirmed the November 21, 2012 conversation where they agreed to turn the furnace on for one hour in the morning and one hour in the evening.

The Landlords initially stated that they use an alternate source of heat which is a wood stove that is located in their basement suite. Upon review of how the oil furnace is utilized the Landlords argued that they turn it on in the morning for one hour but they leave it on and set at 18 degrees. After further discussion the Landlords confirmed that the wood stove heats an area of their basement suite where their thermostat for the oil furnace is located. Once this was confirmed they argued that they do not use the wood stove during the week as it is too messy and they only use it on weekends when the female Landlord is home. They confirmed that the oil furnace thermostat is turned

completely off at night when they go to bed. The Landlords argued that their evidence proves they use the oil furnace as they provided receipts for the purchase of oil.

Upon review of the tenancy agreement the Landlords stated that the Tenant was required to pay her rent plus electricity. They confirmed there is only one electric meter for the entire house. They told the Tenant they would determine the amount she would have to pay by doing some form of a comparison with their old bills each month and taking into consideration the 8% increase from hydro over the past year(s). Nothing was put in writing and no calculations were agreed upon. They noted that items on the tenancy agreement with a straight line through would not be included in rent and anything with an x would be included in the monthly rent.

The Tenant argued that heat was to be included but electricity would not be included because the Landlords were controlling the heat. She stated that since she has moved in the Landlords have been building an addition to their house and have installed baseboard heaters, wall lighting, and used a lot of electricity in the construction of this addition so she feels she should not have to pay the increased amounts of electricity.

The Landlords confirmed they are turning a workshop into an art studio; however they deny using a lot of electricity for this project as they have not begun using the studio as of yet.

The Tenant confirmed that she is considering moving out as soon as she can ready herself. She is hoping to have her rent reduced for the remainder of her tenancy and also seeks to have a determination made on how much electricity she should have to pay. She received a 10 Day Notice on March 5, 2013 indicating she still owes \$200.00 for hydro. She has made the following two payments towards hydro: on January 31, 2013 she paid \$200.00 for November and December 2012; and on March 1, 2013, she paid \$200.00 for January and February. The Tenant said she is of the opinion that she should not have to pay any more for hydro.

The Tenant would also like to have the Landlords ordered to stop calling her children to complain about her not paying the hydro bills. She said they should only contact her children in emergencies and nothing else.

The Landlords confirmed receipt of the two hydro payments and argued that they were not received for payments for four months; rather, they applied them to previous outstanding bills. They also confirmed issuing the 10 Day Notice and calling the Tenant's son to discuss her not paying the hydro bill.

The Tenant said she had initially requested permission to leave without giving proper notice; however, she confirmed she now understands that she must provide the Landlords one month proper notice before ending her tenancy. Upon review of the

tenancy agreement the parties confirmed the fixed term tenancy agreement should end on April 30, 2013 not May 1, 2013, as rent is payable on the first of each month and the tenancy would end on the last day of the month.

The Tenant has also requested a key to the mail box. She argued that she should have daily access to her mail but the Landlords refuse to give her a key to the shared mailbox. They give her the mail when they feel like picking it up from the locked mail box located across the street.

The Landlords confirmed they control the mailbox and do not want to provide the Tenant a key. They argued that they check the mailbox daily and not as sporadically as the Tenant has suggested.

In closing, the Tenant submitted that she would like to have these matters resolved and to have normal temperatures in her home of 19 to 20 degrees Celsius.

The Landlords wanted to make sure that all the facts were considered as they felt the testimony was twisted in favour of the Tenant. I assured the parties that I would consider all of the testimony and documentary evidence before making my decision.

Analysis

The Tenant has requested that her monthly rent be reduced from \$900.00 per month to bring it more in line with other rents being charged in the area. The Landlords have disputed this request arguing that the Tenant agreed to the monthly rent when she entered into her tenancy agreement.

Upon review of the foregoing, I find there to be insufficient evidence to support the Tenant's request for a rent reduction. Accordingly, her request for a permanent rent reduction is dismissed.

Section 32 of the Act stipulates that a landlord must provide and maintain residential property in a state of decoration and repair that (a) complies with the health, safety and housing standards required by law, and (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The facts confirm the Landlords have circumvented or changed the primary heat source of the main floor of the house (the rental space) by cutting off access to the thermostat control for the forced air oil furnace. When negotiating the tenancy agreement the Landlords agreed to install an electric fireplace insert and two electric baseboard heaters for the Tenant's source of heat and required the Tenant to agree to pay for electricity while they would pay for the cost of the heating oil. The Landlords unilaterally changed the agreement and did not provide the fireplace insert or baseboard heaters.

Instead, they sealed off the fireplace to prevent cool air drafts and expected the Tenant to heat a 1200 square foot space, consisting of several rooms, with one portable space heater.

Notwithstanding the Landlords' submission that they have used and purchased oil during these past few months, I accept the Tenant's submission that the space heater(s) were not an adequate source of heat for her rental space which has left her rental unit at temperatures below normal room temperatures.

Upon review of the foregoing, I find the Landlords have breached section 32 of the Act by failing to provide a rental unit with adequate heat that is suitable for occupation by a tenant. Furthermore, I find the Landlords have breached the original terms of the tenancy agreement by failing to install the fireplace insert or electric baseboard heaters, as originally agreed upon, which has caused extraordinarily high hydro bills. Accordingly, I hereby order that effective immediately the Landlords are to provide the Tenant access to the oil furnace thermostat which will give the Tenant the ability to manage the heat at normal room temperatures (19 to 20 degrees Celsius).

Based on the aforementioned I find the Tenant has met the burden to prove she has suffered a loss of quiet enjoyment of the rental unit due to lack of proper heating. Accordingly, I award the Tenant compensation in the amount of **\$200.00**.

Residential Tenancy Policy Guideline # 1 provides that a term in a tenancy agreement which requires a tenant to pay electricity for premises that the tenant does not occupy would be unconscionable. The *Residential Tenancy Regulation* defines an unconscionable term as a term that is oppressive or grossly unfair to one party and is therefore unenforceable.

In this case, I find the term which requires the Tenant to pay for electricity based on the Landlords' calculations of a bill relating to a shared hydro meter to be unconscionable and not enforceable. I make this finding in part because there is only one electric meter which includes the rental unit, the Landlords' living space and an addition or art studio the Landlord has built or created since the tenancy began. Furthermore, the Landlords' calculations on how much the Tenant would have to pay are prejudicial as they are based on previous hydro bills which do not include exorbitant charges for electric heating, which they have forced upon the Tenant by circumventing the heating system, nor do they include charges for electricity used in building or operating their art studio which had electric base board heaters installed.

Based on the aforementioned, I find the Tenant is not required to pay for hydro costs. Therefore, I find the Tenant is entitled to reimbursement of the hydro costs paid thus far in the amount of **\$400.00**.

Having found that the Tenant is not required to pay for hydro costs, I hereby find the 10 Day Notice to end tenancy issued March 5, 2013 for unpaid utilities to be void and of no force or effect.

The evidence supports the mail for both parties is delivered to the same Canada Post super mailbox. The Tenant submits that she is not receiving her mail on a daily basis and that it is being left outside on a chair. The Landlord disputes the Tenant's testimony claiming that he checks the mail regularly.

In cases where the landlord holds the key to the mail box and controls the distribution of a tenant's mail I find the landlord must do so in a manner that is timely and protects the security and privacy of the tenant's mail. Accordingly, I hereby order that effective immediately the Landlords must check the mail daily (on mail delivery days) and place all of the Tenant's mail in a covered mail box they have installed to the exterior of her rental unit. I further order that the Landlord provide the Tenant with a note, including the date, to indicate if no mail was received, pursuant to section 62 of the Act.

During the course of this proceeding the parties agreed that because the rental period runs from the first of each month the fixed term tenancy should end on April 30, 2013 and not May 1, 2013, as noted on the tenancy agreement.

The Landlords confirmed they have been contacting the Tenant's son to discuss the Tenant's non payment of hydro. The parties confirmed the tenancy relationship is between the Landlords and the Tenant, not the Tenant's children. Therefore, I hereby order the Landlords to cease contact or communication with anyone other than the Tenant on matters relating to the tenancy, other than in cases of emergency, pursuant to section 62 of the Act.

Conclusion

The Tenant has been awarded compensation in the amount of **\$600.00** (\$200.00 + \$400.00). This one time award may be deducted from the Tenant's April 1, 2013 rent. For clarity, the Tenant will pay \$300.00 (\$900.00 - \$600.00) as full payment for April 1, 2013 rent, as full satisfaction of this award.

The 10 Day Notice to end tenancy issued March 5, 2013, is **HEREBY CANCELLED**, and is of no force or effect.

The parties agreed the fixed term tenancy ends April 30, 2013.

Effective immediately the Landlords are ordered to do the following:

- Provide the Tenant access to the oil heat thermostat to enable her to manage the heat in her rental unit at normal room temperatures
- Install a mailbox to the exterior of the rental unit and deliver the Tenant's mail daily (on mail delivery days); leaving a note on days when there is no mail to deliver
- Stop all communications regarding tenancy issues with the Tenant's family
- Only contact the Tenant's family in cases of emergency

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

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 11, 2013

Residential Tenancy Branch

