



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, OPB, MNR, MND, MNDC, MNSD, FF
MNDC, FF

Introduction

This hearing concerns 2 applications: i) by the landlord for an order of possession / a monetary order as compensation for unpaid rent / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; and ii) by the tenant for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee.

Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

After the landlords purchased the unit from “KLS” (the “tenant”) and her husband in 2007, pursuant to a written tenancy agreement, “KLS” remained in the unit as a tenant. The tenancy began on December 15, 2007. Monthly rent of \$1,000.00 is due and payable in advance on the first day of each month, and a security deposit of \$500.00 was collected.

While the hydro account still remains in the tenant’s name, pursuant to the tenancy agreement hydro (“electricity”) is included in the rent. As to how payment of hydro is undertaken, in the landlords’ written submission they state, in part, as follows:

I would like to clarify here that she was **self collecting** the required money to pay the hydro bill. She was doing like that because the hydro connection was on her name and that is why she had to collect money from both of us. She was collecting 1/3rd portion of every bill from my past tenants and as agreed she was

deducting my portion of hydro bill from my rent or sometimes she was collecting cash from me whenever the bills were due.

Arising from rent which remained unpaid when due on June 1, 2013, the landlords issued a 10 day notice to end tenancy for unpaid rent. A copy of the notice was submitted in evidence. While undated, the landlords testified that the notice was attached to a letter dated June 24, 2013, and both the notice and the letter were personally served on the tenant on June 30, 2013.

The amount shown as overdue on the notice is \$2,200.00. The landlords testified that this amount is comprised of \$200.00 unpaid rent from April, in addition to \$1,000.00 for each of the months of May and June 2013. Subsequently, the tenant made a cheque payable to the landlord by date of June 15, 2013, in the amount of \$2,200.00. However, this cheque was unable to be cashed due to insufficient funds. No further payments have been made toward rent and the tenant continues to reside in the unit.

The tenant has not filed an application to dispute the notice, and she does not dispute that rent in the amount of \$4,200.00 remains unpaid as follows:

\$200.00: *April*
\$4,000.00: (4 x \$1,000.00) *May, June, July & August*

The tenant takes the position that she has justifiably withheld payment of rent as the landlords have failed to pay hydro in the total amount of \$7,002.96 for the entire period of tenancy from December 2007 to July 2013. The landlords dispute this claim and argue that a claim such as this which is made now with respect to an entire 5 year period defies common sense. The landlords acknowledge that while they may owe the tenant a payment for hydro for the period January 2013 to the present, the amount is uncertain. There is no documentary evidence of the fiscal transactions between the parties with regard to payment of rent, and / or the settling of accounts for hydro.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and testimony, the various aspects of the respective applications and my findings around each are set out below.

LANDLORDS

Order of Possession

I find on a balance of probabilities that that the tenant was served with a 10 day notice to end tenancy for unpaid rent on June 30, 2013. The tenant did not file an application to dispute the notice, the tenant acknowledges that she has made no further payment toward rent after the notice was served, and the tenant does not dispute that rent currently still remains overdue for each of the 5 months of April, May, June, July and August 2013. Accordingly, I find that the landlords have established entitlement to an **order of possession**.

Monetary Order

I find that the landlords have established entitlement to a claim of **\$4,250.00** as follows:

\$200.00: *unpaid rent for April*
\$4,000.00: *unpaid rent for May, June, July & August (4 x \$1,000.00)*
\$50.00: *filing fee*

I order that the landlords retain the security deposit of \$500.00 plus interest of \$7.85 [total: **\$507.85**], and I grant the landlords a **monetary order** under section 67 of the Act for the balance owed of **\$3,742.15** (\$4,250.00 - \$507.85).

While the landlords' application includes ticks in boxes which indicate that they seek an unspecified amount of compensation for damage to the unit, site or property / and an unspecified amount of compensation for damage or loss under the Act, Regulation or tenancy agreement, there is no documentary evidence identifying the specific nature of these particular claims. Accordingly, these aspects of the landlords' application are hereby dismissed with leave to reapply.

TENANT

\$7,002.96: *hydro for the period from December 2007 to July 2013.*

There is conflicting testimony around what portion of hydro may still be outstanding for payment by the landlords. I find on a balance of probabilities that it is unlikely the landlords have failed to pay hydro since the tenancy began in December 2007. I find it more likely that if there is an amount still owed for hydro by the landlords, then it is limited to the period of from January 2013 to the present. As earlier noted, there is an absence of documentation related to the informal arrangement between the parties around payment of hydro. In summary, the tenant's application for compensation for

hydro in regard to the period from December 2007 to December 2012 is hereby dismissed.

I find that the amount which may still be owed by the landlords for hydro for the period from January 2013 to the present is unknown. The parties are therefore encouraged to resolve that matter directly between them as soon as possible. In the meantime, the tenant's application for compensation for hydro in regard to the period from January 2013 to the present is hereby dismissed with leave to reapply.

\$100.00: *filing fee*.

As the tenant has not succeeded with her claim, the tenant's application to recover the filing fee is hereby dismissed.

Conclusion

I hereby issue an **order of possession** in favour of the landlords effective **two (2) days** after service on the tenant. This order must be served on the tenant. 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.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlords in the amount of **\$3,742.15**. This order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

With the exception of her application for compensation related to hydro for the period from January 2013 to the present, which is dismissed with leave to reapply, the tenant's application is hereby dismissed.

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: August 07, 2013

Residential Tenancy Branch

