Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 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 her filing fee for this application from the landlords pursuant to section 72.

The tenant appeared. The landlord BW (the landlord) appeared. The landlord confirmed he had authority to act on behalf of the landlord LW. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant testified that she served the landlords with the dispute resolution package by registered mail. The landlord confirmed that he received a copy of the dispute resolution package on 22 May 2015. On the basis of this evidence, I am satisfied that the landlords were served with the dispute resolution package pursuant to section 89 of the Act on 22 May 2015.

Preliminary Issue – Scope of Proceedings

The tenant filed an amended application 2 June 2015 in respect of this hearing.

Rule 2.11 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) sets out the rules in relation to amendments:

2.11 Amending an application before the dispute resolution hearing

> …If the application has been served, a copy of the amended application must be served on each respondent so that they receive it at least 14 days before the scheduled date for dispute resolution hearing.

The definition section of the Rules contains the following definition:

> In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

Accordingly, the last day for the tenant to file an amendment to this application was 29 May 2015. At the hearing the landlord informed me that he had not had enough time to respond to this amendment. The landlord did not consent to the amendment. The amendment includes addition of a third utility invoice as well as a new issue in relation to the provision of heat.

As the tenant did not file the amendment at least fourteen days before this hearing, the tenant's amendment is not permitted.

At the hearing I asked the parties if a 10 Day Notice had been served in respect of this tenancy. Both parties confirmed that there was no 10 Day Notice issued. The tenant confirmed that she understood that the code "CNR" referred to her claim for the unpaid utilities. I clarified for the tenant at the hearing that this was not the use for which this code was intended. The tenant withdrew her request to cancel the 10 Day Notice. As there is no 10 Day Notice in respect of this tenancy, I allowed the amendment.

I informed the parties of these determinations at the hearing.

Preliminary Issue – Tenant's Late Evidence

The tenant sent evidence in four separate packages: the tenant filed evidence on 2 June 2015, 5 June 2015 and 6 June 2015. The landlord was not in possession of some of this evidence. I reviewed this evidence with the parties at the hearing.

Rule 3.14 of the Rules establishes that evidence from the applicant must be submitted not less than 14 days before the hearing. The last day for the tenant to file and serve additional evidence was 29 May 2015.

This evidence was not served within the timelines prescribed by rule 3.14 of the Rules. Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party.

Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

In this case, some of the late evidence has not yet been received by the landlords. The landlords are entitled to review this evidence so that they may respond. On this basis, I exclude the late evidence not in the landlords' possession. The evidence in the landlords' possession is included.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for loss arising out of this tenancy? Is the tenant entitled to recover her filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy began 20 August 2005. The parties entered into a written tenancy agreement dated 20 August 2005. Rent is $725.00 and is payable before the first of the month. That agreement establishes that the tenant is responsible for paying one third of the utilities for the residential property. The BC hydro invoices are in the tenant's name. The landlord testified that it is the parties' practice that the invoices are paid immediately on presentation of the printed invoice. The tenant did not dispute this practice.

The tenant provided me with a BC hydro invoice dated 6 January 2015. This invoice is in the amount of $624.12. The tenant provided me with a BC hydro invoice dated 6 March 2015. This invoice is in the amount of $582.20.

The tenant filed this claim 22 April 2015. Notices of hearing were issued 1 May 2015.

The tenant and landlord agree that the tenant did not provide the invoices to the landlord before filing this claim. The first time the landlord received copies of these invoices was on 22 May 2015 with the dispute resolution package.

Analysis

The only remedy the tenant seeks is a monetary order.

The agreement between the parties is not covered by the tenancy agreement: the tenancy agreement contemplates payments for utilities flowing from the tenant to the landlord. The bargain struck between the parties by way of an oral agreement is that the landlords will compensate the tenant for two thirds of the hydro invoice. I find that it is an implied term in the oral agreement that the payment from the landlord to the tenant is due after provision of the invoice to the landlord that substantiates the amount. This term is necessary in order to give effect to the reasonable intentions of the parties and is consistent with the parties' practice to date.

The landlord and tenant both agree that the tenant did not provide copies of these invoices to the landlord until after filing this claim. As such, at the time the tenant filed this claim the tenant's claim for repayment had not yet crystalized as the invoices were not yet provided. The tenant's claim to recover these costs is premature and is dismissed with leave to reapply.

As the tenant has been unsuccessful in her claim, the tenant is not entitled to recover her filing fee for this matter.

The landlords are considered to have received copies of the invoices 22 May 2015. I order that payment is due within five days of receipt of this decision. It remains up to the tenant to refile in respect of these unpaid invoices should the landlord fail to pay.

Conclusion

The tenant's claim is dismissed with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: June 15, 2015

Residential Tenancy Branch