



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, MT, MNDC, OLC, FF, OPR, OPL, MNR

Introduction

This hearing dealt with applications from both the tenant and the landlords. The tenant applied to cancel notices to end tenancy for cause and for unpaid rent or utilities; to extend time to make application to cancel one or more of those notices; for an order that the landlord comply with the Act, Regulation, or tenancy agreement; and for a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement.

The landlords applied for an order of possession and a monetary order for unpaid rent or utilities and for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement.

Both the landlords and tenant attended the teleconference hearing and gave affirmed evidence.

At the start of the teleconference, the tenant advised that he is in the process of moving out of the rental unit and will have vacated by Monday, May 26, 2014. For that reason, I do not need to deal with his applications to cancel notices to end his tenancy or to extend time to make such applications. Since the tenancy is coming to an end, I also do not need to deal with his application for an order that the landlord comply with the Act, Regulation, or tenancy agreement.

The landlords and tenant agree that I will issue the landlord an order of possession effective May 26, 2014.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

Are the landlords entitled to a monetary order for unpaid rent or utilities?

Are the landlords entitled to a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

Background and Evidence

The parties agree that the tenancy started September 1, 2013 and the tenant was obligated to pay \$600.00 rent monthly in advance on the first day of the month. The tenant was not required to pay a security deposit.

A tenancy agreement was put into evidence which is signed by all the parties. The landlords' signatures do not indicate the date of signature; the tenant's signature is dated February 6, 2014. The tenant gave evidence that he did not receive a written tenancy agreement before that date.

Tenant's Monetary Claim

The tenant gave evidence that laundry facilities were included in the rent, however he did not have access to the laundry facilities for the last two months of his tenancy. He seeks a monetary order for the cost of doing his laundry elsewhere.

The tenant says he used public laundry facilities or went to friends' homes to do his laundry. He states he is a tradesman and needs to do 3 or 4 loads of laundry each week. Later in the hearing, he estimated he did 4 or 5 loads of laundry at a time. The tenant gave evidence that he drove about 30 minutes to do laundry, and he seeks compensation for his fuel costs. The tenant also seeks compensation for the time he spent waiting for his laundry to be done, at his work rate of \$75.00 per hour.

The landlord agrees that that they discontinued the tenant's access to the laundry facilities two months before the end of the tenancy. However, the landlord says they offered to pay for the tenant's use of a laundromat. The landlords gave evidence that there is a laundromat about two blocks from the rental unit. The landlord's evidence is that the tenant did not ask them for any money, prior to this hearing, for his laundry costs. The landlord's position is that \$100.00 would be a reasonable amount to cover two months' laundry costs.

The tenant gave evidence that there was an ongoing problem with heat in the rental unit. He said that when the upstairs tenants used the wood stove, then the furnace did not come on. His evidence is that there is a baseboard heater in the living room but it does not provide enough heat for the bedroom. The tenant gave evidence that he

spoke to the landlord and the landlord told him to turn up the baseboard heater. He says the landlord also told him the previous tenants did not have a problem with the heat.

The tenant gave evidence that the arrangement with the upstairs tenant was that he would be pay one-third the cost of hydro and the upstairs tenants would pay two-thirds. He later found this unfair because the upstairs unit is much larger than his unit.

The landlord's evidence is that he did suggest the tenant turn up the baseboard heater and the tenant told him he did not want to turn the baseboard heater on. The landlord's evidence is that the rental unit was quite warm when the previous tenants lived there.

The landlords gave evidence that they received the tenant's amended Application for Dispute Resolution on May 9 and he was required to deliver it seven days prior to the hearing, by May 8th. The amended Application sets out a monetary claim that was not made in the initial Application.

Landlords' Monetary Claims

The landlords seek a monetary order based on three claims: unpaid utilities, the cost of delaying the sale of the rental property, and the landlords' costs related to travelling to the rental unit and to the RTB office.

The landlords gave evidence that utilities were not included in the tenant's rent. The tenancy agreement is a standard RTB Tenancy Agreement form; section 3(a) states the rent is "\$600.00 + utilities" and section 3(b) indicates that water, electricity, and heat are not included in the rent.

The landlords claim that the tenant has not paid his share of the utilities for the period from the end of October 2013 through March 2014. The landlords' evidence is that the tenant and the upstairs tenants agreed that the tenant would pay 1/3 of the hydro and cable/internet invoices which were in the upstairs tenant's name. The landlords' evidence is that the tenant is also responsible to pay 1/3 of the water and sewage costs billed to the landlord by the municipality.

The landlords provided copies of BC Hydro invoices for the period November 1, 2013 through March 31, 2014. One-third of the total of these invoices is \$533.44.

The landlord provided a copy of a letter from the upstairs tenant dated March 20, 2014 regarding unpaid utility amounts. The March 20, 2014 letter indicates the tenant had

not made any payments for hydro and his share at that time was \$455.88 [now \$533.44 with the final hydro invoice received since the date of the letter]. The March 20, 2014 letter states the tenant paid cable/internet in full and had paid an additional amount of \$118.09. The March 20, 2014 also indicates the tenant owes \$105.28 for municipal water charges. The letter states the total amount owing the upstairs tenant was \$455.88 [the math is not correct, in fact $\$455.88 - 118.09 + 105.28 = \443.07]. The landlords gave evidence that they paid the upstairs tenant \$455.88 and now seek a monetary order to recover that amount from the tenant.

The landlord provided copies of water bills from the Capital Regional District for the periods Aug 31, 2013 to October 25, 2013 (\$69.83 total), October 26, 2013 to January 3, 2014 (\$66.42 total), and January 4, 2014 to February 28, 2014 (\$44.73 total). The landlord estimates the water charges to be \$60.00 monthly for March, April, and May 2014.

The landlord estimates the sewage charge for the nine month period from September 2013 through May 2014 to be \$100.00 and claims one-third of this amount from the tenant.

The tenant gave evidence that he agrees to paying utilities but felt that one-third was more than he should pay for hydro. Asked if he ever tried to re-negotiate the split with the upstairs tenant, the tenant gave evidence that he did so casually on one occasion and does not recall what the upstairs tenant's response was.

The tenant also gave evidence that he did not believe he should be paying one-third the cost of water and sewage. He said he had never heard of a tenant having to pay for water and sewage costs. Asked what utilities he thought he had agreed to pay, the tenant said he believed he was agreeing to electricity and cable/internet. The tenant does not dispute the amounts the landlord says are outstanding for those utilities.

The landlord claims the tenant's refusal to vacate the rental unit sooner caused the landlord to delay the sale of the rental property, and the landlord therefore incurred costs including \$2,000.00 mortgage interest, \$466.67 taxes, and \$325.00 house insurance.

The landlord's position is that the tenant was told when they entered into the tenancy that the house would be put up for sale in the Spring and "terms of ending tenancy would have to be flexible and possibly quite short". The landlord's evidence is that the house was put up for sale on February 5, 2014 and was sold March 9, 2014. The landlord provided a copy of an amendment (dated March 22, 2014) to the contract of

purchase and sale (dated March 9, 2014), to change the completion, adjustment, and possession dates from April 1, 2014 to June 1, 2014 and “As per the contract, dated March 09, 2014 the Buyer requests the Seller give notice to the tenant, [Name] to vacate the premises not later than May 31, 2014.”

The landlords provided a copy of a 2 Month Notice to End Tenancy for Landlord’s Use of Property dated March 22, 2014, which appears to have been prepared in compliance with the above amendment.

The landlords had previously sought to end the tenancy through notices served in March and April for unpaid rent and for cause. The tenant applied to dispute those notices and the tenant’s applications were scheduled to be heard at this hearing. The landlords had also previously offered the tenant a sum of money to agree to end the tenancy, however the tenant refused.

Two witnesses gave evidence regarding the agreement made between the parties at the start of the tenancy. Carolyn Green, the former upstairs tenant, gave evidence that she introduced the tenant to the landlords because the tenant needed a temporary place to stay. Her evidence is that the tenant was told it would be a temporary situation because the house would be put up for sale. Vivian Bartlett, a friend of the landlords who was staying with them in September 2013, gave evidence that the tenant was told he wouldn’t be staying there any longer than the upstairs tenants because the house was being put up for sale. Her evidence is that the landlords were doing the tenant a favour by letting him stay there temporarily.

The tenant’s evidence is that he does not recall that “terms of ending tenancy would have to be flexible and possibly quite short” was a term of his tenancy. He does remember that the landlords told him the house was going to be put up for sale. His evidence is that the landlords told him that when the house was sold “You’ll have to find a new place to live.”

The tenant’s position is that he is not responsible for the landlords’ costs of postponing the sale of the house. His position is that when a house is sold, a landlord must do the proper paperwork and give a tenant two months’ notice.

Analysis

Section 63 of the Act provides that the parties may settle all or part of their dispute in the hearing, and the director may record the settlement in the form of a decision or an order. Pursuant to this provision, discussion led to resolution regarding the end of the

tenancy. It was specifically agreed that I will grant the landlord an order of possession effective May 26, 2014 at 1 p.m. I grant the landlord an order of possession which must be served on the tenant. Should the tenant fail to comply with the order, it may be filed for enforcement in the Supreme Court.

Tenant's Monetary Claim

Despite the late delivery of the tenant's amended Application, I will consider the tenant's monetary claim. The tenant provided only brief verbal evidence that the landlords were able to respond to in the hearing, and for that reason I find the landlords are not prejudiced by allowing the amendment.

I find the tenant is entitled to reasonable laundry costs for the last two months of his tenancy. I find that the tenant is likely to have done no more than two loads of laundry each week, as that is generally sufficient for a single person, even one who works in the trades. I accept the evidence of the landlord that there is a laundromat available two blocks from the rental unit, so I do not award fuel costs. I estimate the cost of doing laundry at a laundromat to be \$5.00 to wash and dry each load, or \$10.00 per visit for two loads. Based on this estimate, I find the landlord's offer of \$100.00 for the tenant's laundry to be appropriate. The tenant did not provide evidence that he turned down available work in order to do his laundry away from his home, so I do not award compensation for time spent doing laundry.

I accept the evidence of the parties that utilities were not included in the rent. However, I find the parties had a different understanding of what was meant by "utilities". I accept the tenant's evidence that he had never heard of water and sewage costs being charged to a tenant. BC municipalities vary widely in how water and sewage costs are billed to property owners. Some municipalities include water and sewage costs in property tax assessments while others do not. Victoria, the municipality where the rental unit is located, had a phased process starting in 2009 to change their billing for water and sewage from an amount based on assessed property value to an amount based on metered water use.

The tenancy agreement does not indicate that water was included in the rent, but I accept the tenant's evidence that he did not receive the tenancy agreement until February 2014 and for that reason it was not clear until that time that the landlords did not intend to include water in the rent.

Since the landlords seek an order for unpaid utilities, the landlords have the burden of proof to show (on a balance of probabilities) that the tenant owes the unpaid amounts. I

find the tenant was responsible to pay a share of the hydro and cable/internet. However, I find the landlords have not proven that there was an agreement that the tenant would also pay for water and sewage. I therefore dismiss the landlords' claim for the unpaid water and sewage amounts.

I find the tenant owes one-third of the hydro costs for the period from November 1, 2013 through March 31, 2014 and this amount is \$533.44. I find the tenant made an overpayment of \$118.09 for his share of the cable/internet costs. The total amount outstanding for the hydro and cable/internet is therefore \$415.35.

I accept the evidence of the parties that the landlords informed the tenant that the house was going to be put up for sale in the Spring following the start of his tenancy. However, a property being put up for sale does not automatically bring a tenancy to an end. Where a buyer advises a seller that the buyer intends to use the rental unit for the buyer or buyer's close relative, the seller may serve the tenant with a notice to end tenancy for landlord's use. That is what ultimately happened here. Any agreement to end a tenancy simply because a house was put up for sale or sold is not enforceable because Section 5 prevents parties from contracting out of the Act.

For that reason, I find the tenant did not breach a term of the tenancy agreement or other agreement with the landlord. The tenant is therefore not liable for any of the landlords' costs resulting from the tenant not vacating the rental unit sooner.

The landlords also seek a monetary order for their travel costs incurred going to the rental unit and RTB office to deal with unpaid utilities and to serve the tenant with various notices. Travel to deal with problems in a tenancy is part of the ordinary business of being a landlord and the Act makes no provision to recover these costs. The Act does provide that a successful party may recover their RTB filing costs from the other party. Since each party has had some success in their applications, I find that each should bear their own filing fee costs.

The total amount due the landlord for utilities is \$415.35 and the total amount due the tenant for laundry costs is \$100.00. Setting these amounts off against each other results in an award of \$315.35 for the landlord. I grant the landlord a monetary order for that amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order for \$315.35.

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: May 15, 2014

Residential Tenancy Branch

