

## **Decision**

### **Dispute Codes:**

CNR

FF

MT

MNDC

O

RR

### **Introduction**

I have been delegated authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed all of the evidence on the case file before the Hearing. Both parties gave affirmed testimony and the matter proceeded on its merits.

### **Issue(s) to be Decided**

The issues to be determined based on the testimony and the evidence are:

- Whether the Tenant should succeed in her application to be allowed more time to make an Application to cancel the Notice to End Tenancy; and if so
- Whether the One Month Notice to End Tenancy for Cause should be cancelled;
- Has the Tenant established a monetary claim for compensation for damage or loss;

- Whether the Tenant should be allowed a rent abatement or reduction for services or facilities agreed upon but not provided; and
- Whether the Tenant is entitled to recover the filing fee from the Landlord for the cost of this application.

**Preliminary Matter, with respect to the Tenant's application to be allowed more time to file this Application:**

The Landlord testified that he served the 10 Day Notice to End Tenancy dated December 4, 2008 on the Tenant by posting it to the door of the rental unit on December 4, 2008. Pursuant to section 90(c) of the Act, a document served in this fashion is deemed to be served 3 days after posting it on the door of the residence. Therefore, the Tenant was deemed to be served with the Notice to End Tenancy on December 7, 2008.

Under section 46 (4) of the Act, a tenant has five days after being served the Notice to dispute the Notice. Therefore the Tenant had to file her Application for Dispute Resolution by December 12, 2008. The Tenant filed her Application on December 12, 2008. Therefore, the Tenant was within the time limit to file her Application and this matter can proceed.

**Background and Evidence**

The parties agree on the following facts:

- The tenancy started on September 1, 2008.
- The Tenant paid a security deposit in the amount of \$450.00 on August 22, 2008.
- The Tenant personally served the Landlord with a copy of her Application for Dispute Resolution and Hearing package on December 17, 2008.

- The Landlord and the Tenant both received copies of the documents which were submitted into evidence on this file by the Landlord and Tenant.

Tenant's evidence:

The Tenant gave the following evidence, in her evidence package and orally:

- The Tenant testified that she is in partial arrears for the month of December, 2008, in the amount of \$600.00 and has not paid rent in the amount of \$900.00 for the month of January, 2009, for a total owing of \$1,500.00. The Tenant stated that she has not paid the Landlord any utility charges for the months of November and December. She disputes the amount owing to the Landlord. The Tenant provided a copy of the Tenancy Agreement, which indicated that rent included utilities. Rent is listed on the Agreement as being \$900.00 per month. However, there is a clause in the Rental Agreement that the Tenant will pay rent "plus utilities max \$150.00 or 35% of total bill".
- The Tenant's evidence is that utilities are billed by BC Hydro and Terasen Gas. There is a gas fireplace in the rental unit but the Tenant said that she did not have heat in her unit when she moved in because the gas fireplace was broken, there are no controls in her unit for the forced-air heating ducts, and the Landlord did not turn the furnace on. The Tenant testified that the fireplace was repaired in the second week of October. The Tenant submitted that the fireplace is the only item that uses gas in her rental unit and therefore she should not have to pay any portion of the gas bill for the time that her fireplace was not operating, from September 1, 2008 to mid October, 2008. Furthermore, the Tenant disputed that she should pay 35% of utility costs, as there are 5 rental units on the property. The Tenant testified that she thought 20% was more reasonable, but that she did pay the \$150.00 utility charge for the first few months.
- The Tenant provided a copy of the BC Hydro bill dated September 18, 2008, for the period from July 18 to September 18, 2008. The Tenant submitted that she

shouldn't have to pay 35% of this bill as she was only in the rental unit for 18 days of that 63 day period. The total amount owing on this BC Hydro bill was \$314.39.

- The Tenant provided a copy of the BC Hydro bill dated November 19, 2008, for the period from September 19 to November 19, 2008. The total amount owing on this bill was \$467.04

- The Tenant provided copies of the following Terasen Gas bills:

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|--|---------|
| Bill date Aug 18, 2008 for usage from Jul 17 to Aug: | \$99.31 |
|--|---------|

|   |          |
|---|----------|
| Bill date Sep 29, 2008 for usage from Aug 17 to Sep 18: | \$133.01 |
|---|----------|

|   |          |
|---|----------|
| Bill date Oct 17, 2008 for usage from Sep 18 to Oct 17: | \$265.63 |
|---|----------|

|   |          |
|---|----------|
| Bill date Nov 19, 2008 for usage from Oct 17 to Nov 19: | \$226.98 |
|---|----------|

|   |          |
|---|----------|
| Bill date Dec 16, 2008 for usage from Nov 19 to Dec 16: | \$260.10 |
|---|----------|

- The Tenant testified that on the second day of her tenancy, a pipe burst in her suite causing an inch or two of water and sewage to seep onto the floor of her dining room, bathroom, hallway and two bedrooms. The carpets were wet in the bedrooms. The Tenant said the Landlord was quick to respond with a shop vac and towels, but that it was late at night and her son could not sleep with the commotion. The Tenant stayed at a hotel for two nights while the carpet dried. The Tenant requested to be reimbursed \$220.00 for the cost of the hotel accommodation.
- The Tenant testified that the rental unit was not clean and the stove was not operating when she moved into the rental unit. The Tenant testified that Landlord entered her rental unit without her permission or knowledge and replaced the stove three weeks later with one from his own suite upstairs. The

Tenant stated that when she advised the Landlord that the stove was very dirty, he deducted \$100.00 from one month's rent as compensation.

#### Landlord's evidence

The Landlord gave the following evidence, in his evidence package and orally:

- The Landlord testified that the Tenant was in arrears of \$810.00 for the month of December and \$900.00 for the month of January and has not paid her share of utilities in the total amount of \$300.00 for the months of November and December.
- The Landlord stated that the Tenant signed the Tenancy Agreement and had agreed to pay 35% of the utilities to a maximum of \$150.00 when she signed the agreement. The Landlord stated that the Tenant did pay \$1,050.00 each month for the months of September, October and November, which is comprised of 900.00 plus \$150.00 for utilities.
- The Landlord agreed that the gas fireplace in the Tenant's rental unit was not operational until mid-October.
- The Landlord testified that the property consists of 1250 square feet in the main house, a 400 square foot cottage and 2 motor homes. The Landlord lives in the upper floor of the main house and the Tenant lives in the basement.
- The Landlord's evidence is that approximately 10 gallons of dirty water escaped from the burst pipe and overflowed from the Tenant's shower stall, which the Landlord quickly vacuumed up with his shop vac. The Landlord stated that the non-carpeted floors were dried immediately and a small area of carpet remained damp. He stated that the Tenant borrowed his carpet shampooer to clean the carpets. The Landlord said that the \$100.00 rent reduction was for the Tenant's use to clean the stove and the carpet and therefore he has already compensated the Tenant for those items. The Landlord stated that the Tenant accepted the

\$100.00 rent reduction and therefore agreed to those terms. The Landlord stated that it was not necessary for the Tenant and her child to stay in a hotel for two days and that he did not agree to pay for the hotel charges.

- The Landlord testified that the rental unit was cleaned to local standards, inspected and approved by the Tenant. The Landlord denied that he entered the Tenant's suite without her knowledge or permission in order to install the stove. The Landlord said that the Tenant gave him permission to enter her rental unit when convenient to replace the stove.
- The Landlord asked for an Order of Possession.

### **Analysis**

#### **Regarding the Tenant's application to cancel the Notice to End Tenancy**

Section 26(1) of the Act states:

"A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent."

The Tenant did not pay rent when it was due and does not have a right under this Act to deduct all or a portion of the rent. Therefore, I dismiss the Tenant's application to cancel the Notice to End Tenancy.

Section 55 (1) of the Act states:

"If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- a) the landlord makes an oral request for an order of possession, and

- b) the director dismisses the tenant's application or upholds the landlord's notice."

The Landlord requested an Order of Possession. The Notice to End Tenancy was deemed to have been served on December 16, 2008, and therefore was effective on December 26, 2008. I therefore grant the Landlord an immediate Order of Possession.

Regarding the Tenant's application for compensation for damage or loss:

The Tenant applied for compensation in the amount of \$220.00 for the cost of staying in a hotel for two nights after the pipes in her unit burst. The Landlord testified that he did not agree to the arrangement and had already compensated the Tenant by giving her rent abatement in the amount of \$100.00 for cleaning the carpet and the stove. The Tenant did not provide a copy of the receipt for the hotel charge. The Tenant did not prove that it was necessary to vacate the rental unit for two days while the carpets were drying. I dismiss this portion of the Tenant's application without leave to re-apply.

The Tenant applied for compensation because she moved into a dirty suite and did not have use of an oven for 3 weeks, and had no operational heat source until mid-October when her fireplace was repaired. The Landlord testified that the rental unit was cleaned to a reasonable standard prior to the Tenant moving in. I was not provided with a move-in inspection report to indicate that there was any concern with respect to the cleanliness of the rental unit when the Tenant moved in.

However, the Landlord concurred that the Tenant had no operable oven for three weeks and that her fireplace was not repaired until mid October, some 6 weeks after she moved in to the rental unit.

I find that the Tenant is entitled to rent abatement to compensate her for the lack of an oven in her kitchen for 3 weeks and the loss of an operable heat source for a period of 6 weeks. Heat is an essential service. I find that the Tenant is entitled to compensation in the amount of 10% pro-rated daily from September 1, 2008 to September 22, 2008

for the lack of an oven, and the amount of 50% pro-rated daily from September 1, 2008 to October 15, 2008 for the loss of an operable heat source, calculated as follows:

Prorated daily rent ( $\$900.00 \times 12 / 365$ ) = \$25.59

RE: lack of stove for three weeks:

$(\$25.59 \times 10\%) \times 22 \text{ days} = \$56.30$

RE: lack of operable heat source for 6 weeks:

$(\$25.59 \times 50\%) \times 45 \text{ days} = \$575.77$

TOTAL  $(\$575.77 + 56.30) = \$632.07$

The Tenant applied for further compensation because she paid a portion of rent towards utilities. The Tenant stated that rent included utilities, and that even if it didn't, she was paying too high a portion of the utilities.

Both parties provided me with copies of the Tenancy Agreement dated August 22, 2008, and signed by both parties. The Tenancy Agreement is contradictory with respect to whether utilities are included in the rent. The Agreement states that the rent of \$900.00 per month includes electricity, heat and water. However, in the same section of the Tenancy Agreement, there is sentence, clearly indicated in a text box, under "additional information" that states, "plus utilities max \$150.00 or 35% of total bill".

The Tenant concurred that she initially agreed to pay her portion of the utilities with her rent, but that on reflection, thought that 35% was too high because of the number of rental units on the property.

Based on the testimony of both parties and the evidence before me, I find that the monthly rent of \$900.00 did not include utilities and that the Tenant, in signing the Agreement and in paying the utilities for the months of September, October and November, agreed to pay utilities of 35% to a maximum of \$150.00 per month. I dismiss this portion of the Tenant's application without leave to reapply.

Regarding the Tenant's application for a rent reduction for repairs, services or facilities agreed upon but not provided:

The Tenancy has ended and therefore I dismiss this part of the Tenant's application.

Regarding the Tenant's application to recover the filing fee from the Landlord:

The Tenant was generally not successful in her application and therefore I dismiss this portion of her application.

### **Conclusion**

Under section 55 of the Act, and based on the above facts, the Landlord is entitled to an Order of Possession and I hereby issue the order. The Tenant will have two days from the date of service of the order to vacate the premises. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I grant the Tenant a monetary order under section 67 of the *Act* for \$632.07. This order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

January 22, 2009

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