



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MT, CNR, OPR, MNR, MNDC, FF

Introduction

In a decision in this matter dated March 24, 2009, the Tenant's application for more time to cancel a Notice to End Tenancy as well as to cancel a Notice to End Tenancy for Unpaid Rent and Utilities was dismissed and his application for compensation was adjourned to today's date. In the interim, the Landlord applied for an Order of Possession and a Monetary Order for unpaid utilities as well as to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Are there unpaid utilities and if so, how much?
3. Is the Tenant entitled to compensation and if so, how much?

Background and Evidence

The Tenant claimed that in 2007, he made some improvements to the rental property. In particular, he claimed that he built a new set of stairs at the front of the rental unit for which he billed the Landlord \$1,600.00. The Tenant said he was compensated for this work by way of receiving free rent for May and June, 2007 (with a value of \$800.00) and a payment for \$800.00.

The Tenant claimed that he also made a number of repairs to the exterior of the house so that it could be painted. The Tenant also claimed that he painted the front and back of the house as well as the shop and made a new lid for the septic tank. The Tenant said he documented his hours for these repairs at the time he did the work and the total of them was 185 which at a rate of \$20.00 per hour came to \$3,700.00. The Tenant also claimed that he incurred costs of materials of \$395.00. The Tenant said that in payment of this work he received 6 months free rent (July – December, 2007) with a value of \$2,400.00. Consequently, the Tenant argued that he was still owed \$1,695.00 for this work.

The Landlord argued that the Tenant had been fully compensated for his work. In support the Landlord relied on an invoice provided by the Tenant in June of 2007 that

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showed an amount of \$1,600.00 for labour and materials for stairs plus \$55.00 for materials to repair the front of the house. The invoice also shows that there is no charge for repairing the front of the house, painting, installing stairs and fixing the front deck boards. The invoice then shows an \$800.00 reduction for rent for May and June, 2007 leaving a balance of \$855.00. The Landlord claimed that she paid the Tenant the balance on June 6, 2007.

The Landlord said that the Tenant was also asked to do work on a neighbour's fence and in compensation for that work was given 6 months free rent (July – December, 2007) valued at \$2,400.00 plus payment of the utilities for 2007. The Landlord said she wanted to confirm that the Tenant had been fully compensated for his work and on January 15, 2008 prepared a letter setting out those matters. The Landlord said the Tenant signed this letter in November, 2008 acknowledging that he had been fully compensated. The Landlord argued it was not until December, 2008 when she asked the Tenant to pay the utilities for 2008 that he presented her with his invoice dated December 24, 2008 asking for payment of \$1,695.00.

The Parties agree that in or about 2005, the Tenant agreed to pay the municipal water bill when it went to a metered system. The Tenant argued that he never agreed to pay for any additional items on the utility bill such as garbage collection. The Landlord claimed that in 2006, additional levies were added to the municipal utility bill but she argued that instead of raising the rent, she felt the Tenant should be responsible for paying the whole bill. The Landlord admitted that she paid the utility bill in 2007 in partial compensation for the Tenant's work but claimed that the Tenant had paid none of the utility bills for 2008.

The Tenant argued that he gave the Landlord his invoice in December, 2008 because prior to that time he assumed the Landlord would deduct the water portion of the utility bill from the unpaid balance owed to him. The Tenant also claimed that he did not realize what he was signing when he signed the Landlord's acknowledgement letter dated January 15, 2008 on November 22, 2008.

Analysis

Section 55(1)(b) says that a Landlord is entitled to an Order of Possession where the director dismisses the tenant's application or upholds the Landlord's notice. As the Landlord's 10 Day Notice was upheld in the Decision in this matter dated March 24, 2009, I find that the Landlord is entitled to an Order of Possession to take effect at 1:00 p.m. on May 31, 2009.

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I find on a balance of probabilities that the Tenant's work was fully compensated by the Landlord. In particular, the Tenant's list of hours states that they are for his work preparing the exterior of the rental unit for painting as well as for painting. This work is also listed on the signed invoice the Tenant gave to the Landlord in June, 2007 however on that invoice he claimed there would be no charge for this work. Consequently, I find that the Tenant is now seeking to charge the Landlord for work he agreed to do in June 2007 for no charge. I also find that the Tenant's signed acknowledgement on November 22, 2008 that he had been fully compensated for his work for the period, May to December, 2007 is further evidence in support of the Landlord's position. Consequently, this part of the Tenant's application is dismissed.

I also find on a balance of probabilities that there was only an agreement that the Tenant would pay the water portion of the utility bill. The Landlord argued that the Tenant had paid the whole of the utility bills for part of 2005 and 2006. The bills for 2005 show a metered water charge as well as the meter rent. The bills for 2006 include an additional amount for an environmental and drainage charge. The Landlord provided a receipt dated March 13, 2006 which shows the Tenant made a payment of \$73.00 for "H2O" and a receipt dated February 22, 2007 which shows the Tenant made a payment of \$166.25 for "utilities." Given that the Landlord said she paid utilities for 2007, I assume the latter payment was with respect to 2006 charges however, in the absence of any corresponding invoice(s) for this payment, I find that there is insufficient evidence to conclude that the Tenant agreed to pay (or did pay) for charges other than water. Consequently, I find that there was only an agreement that the Tenant would pay the water bill (including the meter rent).

Based on the invoices provided by the Landlord, I find that the Tenant is in arrears of the water portion of the utility bills as follows:

January 1 to March 31, 2008:	\$49.08
April 1 to June 30, 2008:	\$59.45
July 1 to September 30, 2008:	\$68.22
October 1 to December 31, 2008:	<u>\$91.35</u>
Total:	\$268.10

As there is no evidence as to what the water charges are for 2009, that part of the Landlord's application is dismissed with leave to reapply. As the Landlord has been successful in this matter, I find that she is also entitled to recover her \$50.00 filing fee for this proceeding.



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Conclusion

The Tenant's application is dismissed. An Order of Possession to take effect on May 31, 2009 and a Monetary Order in the amount of **\$318.10** have been issued to the Landlord and a copy of the Orders must be served on the Tenant. The Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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 25, 2009.

Dispute Resolution Officer