



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPB, MNR, MNSD, MNDC, RR, FF, O

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a monetary order for unpaid utilities and to recover the filing fee for this proceeding. The Landlord also applied to keep the Tenants' security deposit. The Tenants applied for compensation for loss of services or facilities, for a breach of quiet enjoyment and to recover an overpayment of utilities.

Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Are there arrears of utilities and if so, how much?
3. Are the Tenants entitled to compensation and if so, how much?

Background and Evidence

This tenancy started on December 1, 2007. Rent is \$1,050.00 plus ½ of the gas and hydro for the rental property.

The Landlord said that on August 5, 2009, the Tenants signed a Mutual Agreement to End the Tenancy on September 30, 2009 however, they later refused to move. The Landlord said that he also signed an agreement with the Tenants on August 5, 2009 that the Tenants would move out as agreed as long as he did not bring any dispute resolution applications. The Landlord claimed that there had been many complaints from other tenants in the rental property about the Tenants. The Agreement also stated that as of that date (August 5, 2009) neither party owed the other for utilities.

The Landlord claimed that the Tenants had both the gas and hydro accounts in their names until approximately January 2009 when he had to put the gas account in his name. The Landlord said that it was his and the Tenants' practice that he would pay the gas bill in full and the Tenants would pay the hydro bill in full and that they would be deemed offsetting. The Landlord further claimed that (with the exception of the last 3 months), the Tenants deducted one-half of the total amount of the hydro bill from their rent payments. Consequently, the Landlord argued that the Tenants had arrears of utilities (gas) of \$1,150.00 plus \$60.00 for the September 2009 bill and had not repaid a Hydro deposit of \$100.00. The Landlord said he was willing to forego the amount due if the Parties' agreement to end the tenancy was upheld.

The Tenants admitted that they signed the Mutual Agreement to End Tenancy but claimed that they later found the gas invoices online and discovered that the actual amount of those bills for January to August 2009 did not equally offset the Hydro bills for the same period but rather that they believed they had overpaid by approximately \$305.00 (which includes September 2009). The Tenants denied that they made any deductions from their rent payments for utilities. The Tenants also claimed that the Landlord later told them that they didn't have to move (which the Landlord denied).

The Tenants also claimed that the Landlord turned off the heat in April 2009 and would not turn it on again until October 13, 2009 despite their many requests. One of the Tenants said that he has rheumatoid arthritis and therefore it was particularly difficult for him. The Landlord said that he asked another tenant in the rental property to turn the furnace on but she would not do so despite his requests.

The Tenants said that the use of a dryer was included in their rent but that it had not worked properly since June 2009 (ie. It was not hot enough to dry the clothes). The Tenants said the Landlord told them he would have someone look at it but never did and as a result, they had to dry their clothes at a Laundromat. The Landlord claimed that he looked at the dryer and could find nothing wrong with it.

The Tenants also claimed that the Landlord has harassed them. The Tenants said that the Landlord often comes to the rental unit without any notice and on two of those occasions, gained access to the unit with his own key. The Tenants also said that the Landlord has been argumentative with them and on one occasion, his son became physically threatening.

Analysis

I find that there is insufficient evidence to conclude that the Tenants deducted one-half of their Hydro payments from their rent for January to June 2009 as alleged by the Landlord. Consequently, I find that when the amount of the gas and Hydro bills for the period January – August 2009 are compared, and the deposit amount is deducted from the gas bill, the Tenants paid \$242.12 more than the Landlord (or \$142.12 if the \$100.00 Hydro deposit owed by the Tenants to the Landlord is also taken into account).

However, I also find the agreement (which accompanied the Mutual Agreement to End Tenancy) which was written by the Tenants did not say that the agreement was based on the parties having paid equal amounts for utilities but rather that they agreed that neither party would owe the other any money for utilities as of that date. I make this finding based on the Parties' arrangement for the past 9 months where they **deemed** that the payments would be offsetting. I also find the Landlord did not subsequently

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agree that the Tenants could stay and note in particular, that this argument contradicts the Tenants' evidence that the Landlord and his son were harassing them because they would not leave. Consequently, I find that the Agreement to End the Tenancy is enforceable and that the Landlord is entitled pursuant to s. 55(2)(d) of the Act to an Order of Possession to take effect 48 hours after service of it on the Tenants.

I also find pursuant to the Parties' agreement dated August 5, 2009 that they agreed that (despite what was actually paid) neither would owe the other anything for utilities as of that date (including the \$100.00 deposit owed by the Tenants). Consequently I find that no amounts are owed by other party for utilities prior to August 5, 2009. The Tenants claim that the Landlord owed them \$62.03 for the Hydro bill for September 2009 and provided a copy of the invoice in support. Consequently, I find that the Tenants have made out a claim for **\$62.03** and order the Landlord to reimburse them that amount. The Landlord claimed that the Tenants owed \$60.00 for the gas bill for September 2009 but he provided no evidence of that and as a result, that part of his claim is dismissed.

Section 27 of the Act says that if a Landlord terminates or restricts a service or facility, the Landlord must reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement. The Tenants claimed that they had not had the use of the dryer (which was included in their rent) for August and September 2009. I find on a balance of probabilities that the Tenants did lose the use of they drier due to the Landlord's failure to repair it and as a result, I award them \$60.00 per month for a total of **\$120.00**. I find that the Tenants are not entitled to \$80.00 per month as there would have been a corresponding reduction in the amount paid by them for Hydro as a result of not using the drier in the rental property.

The Tenants also claimed that they did not have heat for the period of August 2009 until October 13, 2009. The Landlord did not dispute this but claimed he could not make the other tenant of the rental property turn the furnace on despite his requests. However, the Landlord is responsible under s. 27 of the Act for ensuring that services and facilities that are essential to the Tenants' use of the property are made available to them. Consequently, I find that the Tenants are entitled to compensation of \$150.00 for September and (prorated) for part of October 2009 for a total of **\$210.00**. I find that the Tenants are not entitled to recover compensation for August 2009 as it was unlikely they would have required heat during that month in any event.

Section 28 of the Act says that a Tenant is entitled to quiet enjoyment including but not limited to the right to reasonable privacy, freedom from unreasonable disturbance and exclusive possession of the rental unit. The Tenants claimed that the Landlord often showed up without notice to them and constantly harassed them about complaints by other tenants in the rental property. The Tenants said that they were the ones who

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were disturbed by the other tenants. The Landlord claimed that he constantly received complaints from other tenants in the rental property about the loud music played by the Tenants' son. The Landlord denied that he tried to enter the rental unit with his own key. Given the contradictory evidence of the Parties, I find that there is insufficient evidence to conclude that the Landlord breached the Tenants' right to quiet enjoyment and that part of their application is dismissed.

As the Landlord has been successful in his claim to enforce the Mutual Agreement to End the Tenancy, I find that he is entitled to recover the \$50.00 filing fee for this proceeding. The Landlord's application to keep the security deposit is dismissed with leave to reapply. I order pursuant to s. 62(3) of the Act that the Parties' awards be offsetting and that the Landlord pay the Tenants the balance owing as follows:

½ of September Hydro bill:	\$62.03
Loss of Drier:	\$120.00
Loss of Heat:	<u>\$210.00</u>
Subtotal:	\$392.03
Less: Landlord's award:	<u>(\$50.00)</u>
Balance owing:	\$342.03

Conclusion

An Order of Possession to take effect 48 hours after service of it on the Tenants has been issued to the Landlord. A Monetary Order in the amount of \$342.03 has been issued to the Tenants. The Order of Possession may be enforced in the Supreme Court of British Columbia. 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: October 27, 2009.

Dispute Resolution Officer