



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

Landlord: OPR, MND, MNR, MNSD, MNDC, FF
Tenant: CNR, MNDC, OLC, RR, O

Introduction

This hearing was convened by way of conference call to deal with applications filed by the landlord and by the tenant. The landlord has applied for an Order of Possession for unpaid rent or utilities; for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for an order permitting the landlord to retain all or part of the security deposit or pet damage deposit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant has applied for an order cancelling a notice to end tenancy for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and for an order permitting the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

The landlord and the tenant both attended the conference call hearing, gave affirmed testimony, and were given the opportunity to cross examine each other on their testimony. The landlord was also assisted in his English by his daughter, who was not affirmed and did not testify. All information and evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for damage to the unit, site or property?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Is the landlord entitled to retain all or part of the security deposit or pet damage deposit in full or partial satisfaction of the claim?
- Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

- Is the tenant entitled to an order cancelling a notice to end tenancy for unpaid rent or utilities?
- Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the tenant entitled to an order that the landlord comply with the *Act*, regulation or tenancy agreement?
- Is the tenant entitled to an order permitting the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The undisputed evidence of the parties is that this month-to-month tenancy began on October 1, 2010 and the tenant still resides in the rental unit. Rent in the amount of \$1,000.00 per month is payable in advance on the 1st day of each month. By verbal agreement, the tenant is to pay 60% of the utilities. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$500.00. No condition inspection report was completed at the beginning of the tenancy.

The landlord testified that the tenant was to pay 60% of the hydro which is in the landlord's name, and she currently owes the landlord \$157.80 for one bill and \$170.73 for the next bill, for a total of \$328.53. The tenant has the gas in her name, and the landlord is to reimburse the tenant 40% of the gas bill, but the tenant has not provided the landlord with any bills. The landlord stated that he gave the tenant \$100.00 in late January or early February, and agrees that \$248.44 is owed to the tenant.

The landlord stated that he received a call from the Ministry offering him \$640.00 for rent, but he refused it because he didn't understand the process of a Crisis Grant, and the rent was more than the \$640.00 offer.

The tenant testified that the landlord had told her before the tenancy commenced that she would have control of the heat for the house, which is a house with a basement suite, and the tenant resides in the upper unit. She also stated that she agreed to 60% of the utilities because she would have control of the thermostats, but the landlord had lied to her. She states she does not have control of the heat, the tenant in the lower unit does, and that tenant keeps the heat too high. She stated that she has to keep her windows open because her unit is too hot from the tenant's overuse, and she never would have agreed to 60% if she had known that the landlord had lied to her.

The tenant further testified that she received a notice to end the tenancy from the landlord and the tenant had paid so much for hydro, she did not have enough money to

pay the rent. The tenant is disabled, and a Crisis Grant was offered to the landlord by the Ministry in the amount of \$640.00 but the landlord refused the money on or about March 14 or 15, 2011. The landlord then called the tenant every 8 minutes or so about rent not being paid for the month of March, and the calls were so frequent, the tenant called the police.

The tenant also testified that she paid \$171.10 to BC Hydro in two instalments in October and November, 2010. She stated that the landlord did not give her copies of the hydro bills until she received the landlord's evidence package prior to this hearing. She stated that she doesn't understand why she should be paying 60% of utilities due to the overuse of the tenants in the lower unit, and that she was taken advantage of. Prior to applying for dispute resolution, the tenant attempted to get a written agreement from the landlord increasing the rent to \$1,250.00 per month including utilities, but the landlord refused to sign the agreement.

The landlord also testified that the tenants in each unit have their own thermostats and the house is heated with natural gas.

When questioned about the landlord's application for a monetary order for damage to the unit, site or property, the landlord replied that he had no claim for damages.

Analysis

In the circumstances, I find that the landlord owes the tenant money for natural gas in the amount of \$248.44 and the tenant owes the landlord \$328.53 for hydro as well as \$1,000.00 for rent. Section 7 of the *Residential Tenancy Act* states that a party who claims compensation from the other party's non-compliance with the *Act*, the regulations or the tenancy agreement must do whatever is reasonable to minimize the damage or loss. If the landlord had accepted the \$640.00 from the Crisis Grant, the tenant would only be in arrears of rent the sum of \$111.56, and therefore the landlord has failed to mitigate his loss by refusing rent money and therefore, the landlord is not entitled to an Order of Possession for unpaid rent or utilities.

It's also clear in the evidence that the landlord is owed \$328.53 for utilities, but the *Act* states that the landlord may treat unpaid utilities as unpaid rent 30 days after the tenant is given written demand for payment of the utilities. In this case, the tenant testified that she received no written demand for payment of the utilities, but received copies of the bills with the landlord's evidence package in advance of this hearing. The landlord did not dispute that evidence however I am also satisfied in the evidence before me that the tenant did not provide the landlord with copies of the utilities she is to be reimbursed for.

I also find that the parties had a verbal agreement wherein the tenant would pay 60% of the utilities, but I also accept the evidence of the tenant that had she known that she did not have control of the heat, she would not have made that agreement. The landlord testified that each unit has its own thermostat but did not dispute the tenant's evidence that he told the tenant she would have control of the heat. I have no evidence before me that either party ever spoke to the tenants in the lower level of the rental house. It may very well be that the tenants in the lower level have to keep the heat up high to heat their unit due to the heat rising to the upper unit.

I find that an agreement requiring a tenant to put the utility billing in her name for premises that the tenant does not occupy is unconscionable. I further find that 50% of the utilities is a fair split in the circumstances, and the landlord should reimburse the tenant the sum of \$50.00 per month in overpayments from October 1, 2010 to March 31, 2011, totalling \$300.00. The parties agree that the landlord owes the tenant \$248.44 and the tenant owes the landlord \$328.53 for utilities, in addition to \$1,000.00 for rent for the month of March, 2011. I find that the tenant owes the landlord \$1,028.53 for rent and utilities, less the \$248.44, for a total of \$780.09.

Conclusion

For the reasons set out above, the landlord's application for a monetary order for damage to the unit, site or property is hereby dismissed.

The landlord's application for an Order of Possession for unpaid rent or utilities is also dismissed. I hereby order that the notice to end tenancy issued March 4, 2011 is cancelled.

The landlord's application for an order permitting the landlord to retain all or part of the security deposit is also dismissed.

I further order that the landlord put the utilities in his name and collect 50% from the tenant within 30 days of presenting the bill to the tenant. I further order that the tenant deduct the amount of 50% of any utility in her name from future rent payments as well as an additional \$50.00 per month for each month that the utility remains in the tenant's name.

I hereby grant the landlord a monetary order for unpaid rent and utilities for \$780.09. This order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Since both parties have been partially successful with their applications, I decline to order that either party recover the filing fee for the cost of these applications.

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: April 6, 2011.

Residential Tenancy Branch