



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, OLC, PSF, RPP, LRE, OPT, LAT, RR, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the tenants 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; for an order that the landlord provide services or facilities required by law; for an order that the landlord return the tenants' personal property; for an order suspending or setting conditions on the landlord's right to enter the rental unit; to obtain an Order of Possession of the rental unit or site; for an order authorizing the tenants to change the locks to the rental unit; for an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of this application.

Both tenants attended the conference call hearing, although only one of the tenants provided affirmed testimony, and the tenants provided evidence in advance of the hearing. However, despite being served with the Tenant's Application for Dispute Resolution and notice of hearing by registered mail on November 17, 2011, the landlord did not attend. The tenants provided a copy of the registered mail receipt as evidence of service, and I find that the landlord has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Are the tenants entitled to an order cancelling a notice to end tenancy for unpaid rent or utilities?
- Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Are the tenants entitled to an order that the landlord comply with the *Act*, regulation or tenancy agreement?
- Are the tenants entitled to an order that the landlord provide services or facilities required by law?

- Are the tenants entitled to an order that the landlord return the tenants' personal property?
- Are the tenants entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit?
- Are the tenants entitled to an Order of Possession of the rental unit or site?
- Are the tenants entitled to an order authorizing the tenants to change the locks to the rental unit?
- Are the tenants entitled to an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The tenant testified that this fixed term tenancy began on June 17, 2011 and expired on October 16, 2011. A copy of the tenancy agreement was provided in advance of the hearing, and it states that at the end of the fixed term, the tenancy ends and the tenant must move out of the residential unit. The document also states: "If you choose this option, both the landlord and tenant must initial in the boxes to the right." The landlord's initial appears in the box, but no initials appear for the tenants.

The rental unit is a room with an ensuite in a house wherein other rooms are rented and the landlord also has a suite. Rent in the amount of \$650.00 per month is payable in advance on the 17th day of each month, and there are no rental arrears, with the exception of rent for the month of November, 2011.

The tenant testified that the landlord locked the tenants out of the building on October 26, 2011 by changing the combination on the lock to the front door. The tenants climbed through the window because the landlord refused to open the door saying that utilities had to be paid first. Then the landlord took away the ladder that the tenants had used to gain entry, and one of the tenants had to stay in the unit at all times. The landlord demanded \$25.00 for utilities, which the tenants gave to the landlord and then the landlord gave the tenants the new combination.

The landlord threatened to have the tenants killed, and the tenants called the police. On November 6, 2011 the landlord locked the tenants out again by changing the combination, but the tenants were able to get in because the door had been left unlocked.

The landlord also shut off the stove by turning off the breaker in the basement on October 10, 2011, and the tenants have no access to the basement. The breaker was turned on again on October 29, 2011 because it was needed for a new tenant.

The tenant further testified that the laundry room was never locked, but the landlord locked it on October 14, 2011 and gave keys to other tenants, but these tenants did not receive a key. On October 3, 2011 the landlord also took away the tenants' ability to watch TV by taking the remote control to the landlord's suite. A converter had been set up with the cable company on October 11, 2011 and a code was then required to use it, which was not provided to the tenants. On the same date, the landlord contacted the cable company and had a code installed which prevented the tenant from accessing the internet. The tenants had no internet or cable for the first 2 months of the tenancy, which is included in the rent. The landlord finally had cable installed on August 19, 2011, and the tenant bought a wireless adapter for \$80.00. Further, on August 19, 2011 the landlord had another tenant disconnect the modem so no one had a phone. Prior to that, the landlord interrupted the tenants' phone calls.

The tenant also stated that the tenants have not been in their home since November 13, 2011.

The landlord also entered the tenants' room without notice to the tenants, and had another tenant enter that room as well. The tenant confronted the landlord about a missing converter and called the police. The landlord told the tenant that the other tenant let the cable company in, but the tenant does not believe that statement.

The tenant further testified that the house has 3 garages and the landlord rented out the tenants' portion of the storage area in one of the garages. The landlord also rented out the tenants' parking spot.

The tenancy agreement states that the following are included in the rent: water, electricity, heat, furniture, stove/oven, dishwasher, refrigerator, carpets, window coverings, cablevision, laundry (free), sheets and towels, storage, garbage collection, parking for 1 vehicle, and dishes. The agreement also states under Additional Information: "\$100 + 75 for utilities, cable, internet & phone."

The parties had appeared at a hearing before a Dispute Resolution Officer on November 2, 2011 which dealt with an application by the tenants to cancel a notice to end tenancy, as well as for monetary compensation, an order that the landlord comply with the *Act*, an order that the landlord provide services or facilities required by law, and a reduction in rent. Because the Dispute Resolution Officer found that the issue of the notices to end tenancy took precedence, the Dispute Resolution Officer determined it was appropriate to dismiss the remainder of the tenants' application with leave to reapply. The notices to end the tenancy were cancelled, and this hearing dealt with the remaining issues. However, the Decision of the Dispute Resolution Officer is dated November 2, 2011, and the hearing was held on the same day. The landlord

subsequently served another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on November 6, 2011, a copy of which was provided in advance of the hearing. The notice states that the tenants failed to pay rent in the amount of \$650.00 that was due on October 17, 2011 and that the tenants failed to pay utilities in the amount of \$446.15 following a written demand on November 6, 2011.

The tenants claim a monetary order from the landlord in the amount of \$2,965.24 and provided a list of claims as follows:

- \$150.00 for no cable, internet or phone for the first 2 months of the tenancy (from June 17 to August 19, 2011), being \$50.00 per month for the internet and cable and \$25.00 per month for the phone;
- \$75.00 for no phone from August 19 to date at \$25.00 per month;
- \$250.00 for loss of the internet, stove, cable and laundry facilities from October 11, 2011 to date;
- \$292.74 for being locked out of the house from October 16 to October 26, 2011;
- \$247.50 for being locked out of the house again from November 6, 2011 to date;
- \$500.00, or 250.00 each for 2 mountain bikes, being a Nakamura Blackhawk and a K2 Z20 that are currently withheld by the landlord;
- \$200.00 for a Kirkland stainless steel barbeque also currently held by the landlord;
- \$375.00 for an RCA television and 2 recorders currently held by the landlord;
- \$250.00 for loss of storage;
- \$200.00 for loss of the parking space promised by the landlord;
- \$25.00 for recovery of the money given to the landlord on October 26, 2011.

The tenants do not want to return to the rental unit.

Analysis

Firstly, dealing with the notice to end the tenancy, I have read the Decision of the Dispute Resolution Officer dated November 2, 2011 and I find that the landlord already has a Decision that clearly states that the landlord must give the tenants written demand for utilities and then allow the tenants 30 days in which to pay for the utilities. The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is dated November 6, 2011 and states that the utilities were unpaid following a written demand on November 6, 2011. Clearly the landlord did not provide 30 days to pay the utilities. Further, the landlord did not attend this hearing to defend the notice and I have no evidence before me to establish that rent for October, 2011 has not been paid. The tenant testified that all rent has been paid except for rent due on November 17, 2011, and in the absence of any

disputed testimony from the landlord, I find that the tenants have established that the notice ought to be cancelled.

The tenant testified that the tenants do not want to return to the rental unit, and therefore, I find that the tenants' applications for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for an order that the landlord provide services or facilities required by law; for an order suspending or setting conditions on the landlord's right to enter the rental unit; for an Order of Possession of the rental unit or site; and for an order authorizing the tenants to change the locks to the rental unit ought to be treated as withdrawn, and I dismiss those claims. However, I further find that the tenants' applications for a monetary order; for an order that the landlord return the tenants' personal property; and for an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided have been established by the tenants. With respect to the monetary order requested by the tenants, I find that the tenants have established the following amounts:

- \$150.00 for no cable, internet or phone for the first 2 months of the tenancy (from June 17 to August 19, 2011), being \$50.00 per month for the internet and cable and \$25.00 per month for the phone;
- \$75.00 for no phone from August 19 to date at \$25.00 per month;
- \$250.00 for loss of the internet, stove, cable and laundry facilities from October 11, 2011 to date;
- \$292.74 for being locked out of the house from October 16 to October 26, 2011;
- \$247.50 for being locked out of the house again from November 6, 2011 to date;
- \$250.00 for loss of storage;
- \$200.00 for loss of the parking space promised by the landlord;

With respect to the items withheld by the landlord, I find that the tenants have failed to establish the values of those items. I have no evidence before me that proves the amount that the tenants should be entitled to recover. Therefore, I find that the tenants' application for return of those items has been established.

With respect to the tenants' application for an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, this matter has been dealt with above. The tenants are entitled to a monetary order in the amount of \$1,465.24.

I further find that the tenants paid rent in full for the month of October, 2011 and were denied entry on October 26, 2011. The *Residential Tenancy Act* prohibits the landlord from unreasonably restricting access to residential property, and I find that the landlord

had no lawful right to deny the tenants entry. Therefore, I find that the tenants are entitled to recovery of rent paid from October 26 to October 31, 2011 in the amount of \$125.80.

I also find that the landlord has failed to establish that the tenants owed any money to the landlord and the tenants are entitled to recovery of the \$25.00 they paid to the landlord on October 26, 2011.

Conclusion

For the reasons set out above, the notice to end the tenancy is hereby cancelled.

I further order the landlord to return to the tenants 2 mountain bikes, being a Nakamura Blackhawk and a K2 Z20; the Kirkland stainless steel barbeque; the RCA television and 2 recorders currently held by the landlord. I order the tenants to return to the rental unit on December 15, 2011 at 1:00 p.m. to retrieve those items. If all items are not returned by the landlord on that date at that time, the tenants will be at liberty to re-apply for a monetary order and will be held to the proof of the value of those items. I also suggest that the tenants be accompanied by a peace officer to ensure a peaceful recovery of those items.

I hereby grant a monetary order in favour of the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,616.04. This order is final and binding on the parties and may be enforced.

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: December 8, 2011.

Residential Tenancy Branch