



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OP, MNDC, OLC, RR, FF

Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the landlord: as an application for an Order of Possession, and to recover the filing fee associated with his application.

By the tenant: as an application for a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; an order for the landlord to comply with the Act, regulation, or tenancy agreement; to allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order, and for what amount?

Is the tenant entitled to rent reduction?

Is the tenant entitled to recover the filing fee?

Should the landlord be issued orders to comply with the Act, regulation or tenancy agreement?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a basement suite in a single detached home. In their documentary evidence, each party provided their own copy of the tenancy agreement. The tenant's version shows that rent is \$650.00 per month, that cable and internet are included in the rent, and that he paid the landlord \$200.00 for a pet damage deposit, stating that the no-pet clause was changed on July 3rd, 2011. The landlord's version shows that rent is \$750.00 per month, that only cable is provided in the rent, and that a pet damage deposit is not applicable since pets are not allowed. The portions of the agreement that do agree in both versions is that the tenancy started on June 1st, 2011, and that the tenant paid a security deposit of \$325.50. Nevertheless, at the hearing the parties agreed that the rent was \$650.00 per month, and that the tenants paid a pet damage deposit of \$200.00. What remained in dispute was the internet clause; the tenants maintain that their copy shows "Net" as included, and the landlord argues it was not in the original agreement.

Tenant P.H testified that cable and internet services were discontinued in August 2011 and never restored. He stated that he had the services hooked up again and that he has paid \$94.15 for the past 6 months.

P.H stated that on October 12, 2011 he told the landlord that the heat was no working. He said that in late November, the landlord provided him with an oil space heater, but that it is not adequate to heat the whole basement. He said that he also heard rats in the walls, and that as of February 2012 the landlord has not fixed any of the problems yet.

The tenant said that he has addressed other issues with the landlord, but that the landlord does nothing to fix any of the problems.

The tenant submitted a monetary claim as follows:

- | | |
|--|-----------|
| - \$94.15/mth for 6 months for cable and internet: | \$ 574.90 |
| - \$150.00/mth for 5 months without heat: | \$ 750.00 |
| - Sub-total: | \$1324.90 |

The landlord testified that he called a plumber 3 times to fix the heating problem. He stated that he provided the tenants with a portable heater. He said that although he was slow to fix the problem, along with the tenants' own heater heat was adequate in the basement and does not agree that it was as cold as alleged by the tenant. He stated that he is on an equal plan and that his heating cost is \$139.00 per month throughout the year.

Concerning cable, the landlord stated that cable was disconnected as of December 15, 2011, and provided a copy of the disconnection notice. He stated that the cable service for the tenants was \$39.90 per month. In his documentary evidence, the landlord provided a statement wherein he describes a number of issues with the tenants, such as bringing in an additional guest, pets, and a washer and dryer without his consent. He also provided a copy of the tenants' notice to end tenancy dated February 2, 2012, with an effective date of February 29, 2012. The landlord requested an Order of Possession to ensure the tenancy ends on that date.

Analysis

Before a Dispute Resolution Officer can make an order under section 67 of the *Residential Tenancy Act*, the applicant must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage. When these requirements are not satisfied, and particularly when the parties' testimonies are at odds, in the absence

of other substantive independent evidence the burden of proof is not met. In this matter that burden was on the tenants to prove their claim against the landlord.

On the evidence I am not persuaded on a balance of probabilities that the landlord added the internet as inclusive in the rent. I am however satisfied based on the documents provided that cable was disconnected as of December 15, 2011, and that this service of \$39.90 per month was included in the rent. Therefore I find that the tenants are entitled to recover this portion of their expenses.

Concerning the heat, the landlord has a burden to keep the rental unit in good repair and that there was an ongoing problem throughout the winter. The landlord did not provide convincing evidence that he attended to the tenants' concerns in a timely fashion; he admitted at the hearing that it was he was in fact slow to respond. I also find in that regard the tenants' evidence more credible that the temporary heating sources were not adequate to keep the basement comfortably warm. The landlord pays \$139.00 per month for heat and I find the tenants entitled to \$60.00 per month from mid-October 2011 to mid-February 2012 for the lack of sufficient heat.

This tenancy was fraught with problems from the start. The tenants provided written notice and confirmed at the hearing that they will be moving out on March 1st, 2012. Accordingly I grant the landlord an Order of Possession for that date.

Conclusion

Cable service is \$44.69 per month with taxes; I award the tenants recovery of the cable charges from December 15, 2011 to February 29, 2012 for a claim of \$111.73, based on 2.5 months. I award the tenants \$60.00 per month for 4 months for a claim \$240.00 for rent reduction related to the loss of heat.

The tenants established a claim of \$351.73. Since they were partially successful, I award the tenants \$25.00 as partial recovery of the filing fee. Pursuant to Section 67 of the Act, I grant the tenants a Monetary Order totalling \$376.73.

This Order may be registered in the Small Claims Court and enforced as an order of that Court.

I grant the landlord an Order of Possession effective no later than 1:00 PM, March 1st, 2012.

This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Since this contract agreement ends on that date, it is no longer necessary that I issue orders for the landlord to comply.

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: February 27, 2012.

Residential Tenancy Branch