



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, RR

Introduction

This was the hearing of the tenants' application to cancel a 10 day Notice to End Tenancy for unpaid utilities, for an order that the landlord comply with the Act and for a rent reduction

Issue(s) to be Decided

Should the Notice to End Tenancy dated April 10, 2012 be cancelled?

Should the landlord be directed to comply with the Act?

Are the tenants entitled to a rent reduction and if so, in what amount?

Background and Evidence

The rental unit is an upstairs suite in the landlord's house in Nanaimo. The tenancy began in August, 2011. Monthly rent is \$1,100.00 and the tenant is responsible for paying 65% of the utilities. The utility account is in the landlord's name. When the tenants rented the unit they responded to the landlord's advertisement that described the rental property as including a 3 car garage. The landlord's elderly parents live in the downstairs unit beneath the tenants. There are laundry facilities on the lower level, adjacent to the unit occupied by the landlord's parents. The tenant testified that when she viewed the rental unit the landlord told her that a door would be installed to separate the laundry facilities from the parents' suite. She said that the landlord has not installed the door and she must get the parents to let her into their suite in order to use the laundry.

The tenant testified that after the tenancy began the landlords took away the use of the three carports or garages. They have been used by the landlord to store the goods and furnishings of a relative of the landlord and one unit is now used to provide access to the parent's suite.

The tenant testified that she has not received a written demand for payment of utilities and the landlord did not provide her with copies of the utility bills until after she filed this proceeding. The tenant testified that she was served with a 10 day Notice to End Tenancy for unpaid rent or utilities on April 11, 2012. The Notice claimed that the tenants failed to pay BC Hydro utilities in the amount of \$1,321.45: "following written demand on Sept 2011 to March 2012".

The tenant said that she has paid one instalment of utilities in October. She considers that the utility payments should be in question because the landlord has not installed a door separating the two suites, has deprived them of the garage space and has not cleaned up garbage that has been left in the yard since the tenancy began.

During the hearing the landlord said she wants the tenants to move so that her relative can move into the rental unit.

Analysis and conclusion

Section 46 (6) of the *Residential Tenancy Act* provides that if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

The landlord has not provided any documentary evidence to show that the tenants have been given a written demand for payment of utility charges before the Notice to End Tenancy was given. Because there is no evidence of a written demand, I find that the Notice to End Tenancy is void and of no effect and I order that it be and is hereby cancelled. The tenancy will continue.

I caution the tenants that they are not entitled to withhold rent or utility payments without an order and they may be evicted if they fail to pay the utilities after the landlord has given them a written demand to do so.

With respect to the tenant's other claims, I find that the landlords did promise to install a door separating the two suites and providing the tenants with access to the laundry facilities. I order that the landlord forthwith install a door to separate the rental unit from the parents' suite so as to provide the tenants with access to the laundry facilities. The tenants have liberty to reapply if the door is not installed within a reasonable time.

The tenancy agreement stated that two parking spaces are included with the rental unit. I find that the tenants have been improperly deprived of the use of the carport which was promised by advertisement and by the tenancy agreement. I find that the tenants are entitled to a rent reduction in the amount of \$50.00 per month until the use of the carport is provided to the tenants. Commencing June 1, 2012 the monthly rent payable will be \$1,050.00 per month until such time as the landlord provides the tenants with use of the carport.

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 10, 2012.

Residential Tenancy Branch