



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, O

Introduction

This hearing dealt with the tenant's application pursuant to section of the *Residential Tenancy Act* (the *Act*) for an order requiring the landlord to comply with the *Act* and for other unspecified remedies. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to discuss their concerns about this tenancy. Although the landlord served two 10 Day Notices to End Tenancy for Unpaid Rent and/or Utilities (the 10 Day Notices) to the tenant on February 7 and February 18, 2012, the landlords cancelled their previous application for dispute resolution to pursue an end to this tenancy on that basis. The landlord's agent and the landlord confirmed that the female tenant who attended this hearing (the tenant) handed him a copy of her dispute resolution hearing package on June 3, 2012. I am satisfied that the tenant served this package to the landlord in accordance with the *Act*.

Issues(s) to be Decided

Should any orders be issued against the landlord? Should any other measures be taken with respect to the tenant's application?

Background and Evidence

This periodic tenancy commenced on November 2, 2011. The landlord's agent testified that the landlord provided a copy of the Agreement to the RTB a week before this hearing. The RTB has no record of any such delivery of a copy of the Agreement by the landlord or her agent. The application for dispute resolution form asks the tenant applying for an order that the landlord comply with the *Act*, regulation or tenancy agreement to supply a copy of the relevant provision that requires the landlord's compliance. The Residential Tenancy Branch (RTB) did not receive a copy of the Residential Tenancy Agreement (the Agreement) from either the tenants or the landlord.

Despite the absence of the Agreement, the tenant did not dispute the landlord's claim that the Agreement requires the tenants to pay a monthly rent of \$1,300.00, payable in advance on the first of each month, plus heat and hydro. The landlord continues to hold the tenants' \$650.00 security deposit paid on November 2, 2011.

At issue is the interpretation given to the provision in the Agreement that the tenants are to be held responsible for paying heat and hydro. The landlord's agent maintained that this provision required the tenants to pay all of the heat and hydro costs for this two unit residential property. The landlord lives in the basement suite in this property. The landlord's agent attempted to justify this interpretation of the Agreement by maintaining that the tenants' responsibility for all of the heat and hydro for this property amounts to a sharing of the total responsibility for other services and utilities for which the landlord is solely responsible (e.g., water, sewer, garbage pickup, property taxes).

The landlord entered written evidence that the tenants paid all of the heat and hydro bills charged to the landlord for the first two months of their tenancy. By the third month of their tenancy, the landlord maintained that the tenants were paying only that portion of the heat and hydro bills that would avoid disconnection by the utility providers. By now, there is a considerable gap between what the tenants have paid and what the utility providers have charged the landlord for heat and hydro.

The tenant testified that the tenants should only be held responsible for their portion of the heat and hydro they use in this two unit property. She asked for an order requiring the landlord to charge only for their portion of this property. The tenant conceded that the tenant's three bedroom rental unit plus office downstairs should be charged more than one-half of the heat and hydro costs for this property. She did not dispute the landlord's agent's claim that the basement unit is a two bedroom unit which is not as large as the tenants' portion of this property. The tenants said that she would be willing to accept responsibility for 60 % of the heat and hydro charges for this property.

When I advised the landlord that I did not agree that the Agreement would require the tenants to pay all of the heat and hydro for this property, the landlord's agent testified that a more accurate distribution of the heat and hydro charges would require the tenants to pay 70% of these charges. This would leave the landlord responsible for the remaining 30% of the heat and hydro charges. The parties were unable to reach agreement on this gap between their estimates of the apportionment of heat and hydro charges.

Analysis

Pursuant to section 63 of the *Act*, the dispute resolution officer may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise. Both parties testified that they were interested in ending this tenancy as soon as possible.

Although they were unable to resolve the other issues in dispute, both parties agreed that this tenancy will end by 1:00 p.m. on July 1, 2012, by which time the tenants will have vacated the rental premises.

Even though this tenancy is ending soon, I find that a determination regarding the interpretation of the Agreement would be of benefit to enable the parties to potentially resolve the monetary issues that remain in dispute. Since the tenants have applied for an order requiring the landlord to comply with the *Act* and the Agreement, I find that it would be prudent to make a final and binding determination regarding a suitable percentage of the heating and hydro costs to be assumed by the tenants during the course of this tenancy. Both parties gave oral testimony regarding this issue which is clearly before me as a result of the tenant's application for dispute resolution. I find that the landlord has not been complying with a reasonable interpretation of the Agreement by charging the tenants for all of the heating and hydro costs for this property during the course of this tenancy. Based on a balance of probabilities, I issue a final and binding order that the tenants are responsible for 65% of the heating and hydro costs since this tenancy commenced on November 2, 2011. I direct the parties to reflect this order in the calculations they make in determining the current status of any heating and hydro payments and charges arising out of the entire duration of this tenancy.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord if the tenant does not vacate the rental premises in accordance with their agreement. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a final and binding order that the Residential Tenancy Agreement reached between the parties makes the tenants responsible for 65% of the heating and hydro costs for this property since this tenancy commenced on November 2, 2011.

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: June 20, 2012

Residential Tenancy Branch