



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNSD, FF / MT, CNR, MNDC

Introduction

This hearing concerns 2 applications: i) by the landlords for an order of possession / a monetary order as compensation for unpaid rent or utilities / retention of the security deposit / and recovery of the filing fee; ii) by the tenants for more time to make an application to cancel a notice to end tenancy / cancellation of a notice to end tenancy for unpaid rent or utilities / and a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement.

Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The most recent decision in the on-going dispute between these parties is dated June 11, 2012 (files # 791147 & 791325). Prior to that are decisions dated March 27, 2012 (files # 788258 & 788413), and February 1, 2012 (file # 786021).

The subject unit is located on the upper level of a house. Other renters have resided in the lower level of this house. There is no written tenancy agreement in evidence for the month-to-month tenancy which appears to have begun on or about July 11, 2011. Details related to the amount of monthly rent, the date when rent is due, and the agreement around the proportional share of the cost of utilities between the subject tenants and the other renters is reported variously in the previous decisions. I have concluded that monthly rent of \$1,150.00 is due and payable in advance on the third day of each month, and that a security deposit of \$575.00 was collected. I have also concluded that the utilities (hydro & gas) are to be in the name of the landlords, and that the monthly cost is to be shared evenly (50/50) between the subject tenants and the other renters in the lower level.

I note the finding in the decision dated June 11, 2012, that an order of possession which was previously issued in favour of the landlords, is of no force and effect since the landlords later accepted payment of rent without issuing a receipt showing that the rent was received “for use and occupancy only.”

Arising from their view that rent and utilities remained unpaid when due on July 3, 2012, the landlords issued a 10 day notice to end tenancy for unpaid rent or utilities dated July 4, 2012. The parties variously report that the notice was served in person on either July 4 or 5, 2012. A copy of the notice was submitted in evidence. Subsequently, while the tenants filed an application to dispute the notice on July 12, 2012, the tenants made no further payment toward rent or utilities following receipt of the 10 day notice, and they continue to reside in the unit.

Included in the tenants’ application is an application for more time to make an application to cancel a notice to end tenancy. This aspect of the tenants’ application arises as follows:

- as the 10 day notice was served in person on either July 4 or 5, 2012, it is deemed to have been received by the tenants on one of those days;
- section 46(5) of the Act which addresses **Landlord’s notice: non-payment of rent**, provides that a tenant has 5 days after receipt of the notice to either pay the outstanding rent and utilities, or file an application for dispute resolution;
- if I find that the notice was served on the latter of the 2 dates identified, then the 5th and final day available to the tenants to do either of the above fell on July 10, 2012;
- as the tenants’ application was not filed until July 12, 2012, the application was made outside of the 5 day limit;
- accordingly, the tenants have applied for more time to make an application to cancel a notice to end tenancy.

As to the reason(s) why the tenants made no further payment of rent after receiving the 10 day notice, and made a late application to have the notice set aside, the tenants drew attention to previous decisions. The tenants claim they were confused, and that their understanding is that they still had a “credit” for rent in the amount of \$1,925.00 (decision dated June 11, 2012) arising out of the monetary order previously issued in their favour in the amount of \$3,600.00 (decision dated February 1, 2012).

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and testimony of the parties, the various aspects of the respective applications and my findings around each are set out below.

LANDLORDS

\$3,450.00: unpaid rent for May, June & July 2012 (3 x \$1,150.00).

The issue of unpaid rent was addressed in the decision of June 11, 2012, in part as follows:

I find that the \$575.00 owing for May 2012 and \$1,100.00 owing for June 2012 rent, may be deducted from the \$3,600.00 monetary order leaving a balance owing to the tenants of \$1,925.00.

...I order the landlord to deduct the remaining balance owed to the tenants of \$1,925.00 from future rent.

As a result of the above, I find that the matter of unpaid rent for May & June, and unpaid rent to up to a point thereafter in 2012, has already been decided. Black's Law Dictionary defines *res judicata*, in part, as follows:

Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.

The landlords' application anew for compensation for unpaid rent for May & June is, therefore, hereby dismissed.

As for July's rent of \$1,150.00, as earlier noted, the decision by date of June 11, 2012 instructed the landlords to make a deduction from the balance of \$1,925.00 still owed to the tenants.

Accordingly, I find that a withholding of \$1,150.00 for July's rent from the \$1,925.00 still owed to the tenants, leaves a balance still owed to the tenants of \$775.00 (\$1,925.00 - \$1,150.00). In the result, the landlord's application anew for unpaid rent for July is also hereby dismissed.

Order of possession:

Following from the above, I find that as payment of rent for May, June and July has been decided pursuant to the decision dated June 11, 2012, the notice to end tenancy for unpaid rent dated July 4, 2012 is hereby set aside.

\$949.66: tenants' share of unpaid (gas) utilities (\$1,899.33 ÷ 2).

\$510.22: gas utilities re: statement dated March 22, 2012.

\$164.42: gas utilities re: statement dated April 13, 2012.

\$333.18: gas utilities re: statement dated May 15, 2012.

\$891.51: gas utilities re: statement dated June 22, 2012.

Grand Total: \$1,899.33

While documentary evidence submitted by the landlords includes statements from the gas provider (Fortis) in support of the above, there is no evidence of a written demand from the landlords to the tenants concerning payment for utilities. In this regard, section 46(6) of the Act provides as follows:

46(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) 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.

Following from the above, the landlords' notice to end tenancy for unpaid utilities dated July 4, 2012 is also hereby set aside.

In summary, the landlords' application for an order of possession is dismissed, and the tenancy presently continues uninterrupted. The landlords' application for a monetary order as compensation for unpaid utilities is dismissed with leave to reapply.

\$50.00: filing fee.

As the landlords have been unsuccessful in their application, the application to recover the filing fee is hereby dismissed.

Total current entitlement: Nil.

TENANTS

\$577.80: cost of 3 month (April, May & June) storage for both tenants (\$288.90 x 2).

The tenants testified that arising from the last order of possession issued in favour of the landlord, and in anticipation that they may be required to vacate the unit while their application to have the notice set aside had not yet been decided, they rented storage space for belongings normally kept in the rental unit. Ultimately, the landlord's notice to end tenancy was set aside and the tenancy continued in full force and effect.

I find that the issuance of the notice to end tenancy, and the related applications for dispute resolution were all part and parcel of due process in disputes between landlords and tenants. As such, I find there is insufficient evidence to support a claim which holds the landlords responsible for the storage costs claimed. Accordingly, this aspect of the application is hereby dismissed.

\$958.89: utility (hydro) bill.

The tenants testified that a hydro invoice dated April 3, 2012 shows a balance outstanding for hydro of \$673.29 after a credit was applied to the amount originally claimed. The current balance is therefore unknown and, in any event, the tenants dispute that they are responsible for the full amount. In the absence of any relevant documentary evidence, this aspect of the application is hereby dismissed with leave to reapply.

\$2,040.00: breach of the right to quiet enjoyment / compensation arising from landlords' failure to put hydro in the landlords' name (102 days x \$20.00 per day).

Section 28 of the Act speaks to **Protection of tenant's right to quiet enjoyment**. Further, Residential Tenancy Policy Guidleine # 6 addresses "Right to Quiet Enjoyment."

The tenants claim that a collection agency has been in contact with them concerning the outstanding balance still owed in the hydro account, and that not only is this particularly stressful, it foreshadows the possibility that hydro to the unit will be terminated without notice. Further, even while the landlord testified that hydro has now been put in the landlord's name (as ordered in a previous decision), the tenants claim that this is not the case and, further, that the amount of hydro still outstanding is only in part their responsibility. No related documentary evidence is before me from either party on this matter. Accordingly, this aspect of the tenants' application is hereby dismissed with leave to reapply.

Total current entitlement: Nil

Conclusion

The landlords' application for an order of possession is hereby dismissed, and the tenancy therefore continues in full force and effect.

The landlords' application for a monetary order is hereby dismissed, with limited provision to reapply.

The tenants' application for a monetary order is hereby dismissed, with limited provision for leave to reapply.

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: August 2, 2012.

Residential Tenancy Branch