



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, MT, CNR, FF

Introduction

This was a cross-application hearing.

The landlord has made application requesting an Order of Possession for Unpaid Utilities, a monetary Order for unpaid utilities, to retain the security deposit, and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The tenants applied requesting more time to dispute a Notice and to cancel the 10 Day Notice to Tend Tenancy for Unpaid Rent or Utilities.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the included evidence and testimony provided.

The female tenant was served with Notice of this hearing, sent to her at the rental unit address via registered mail on October 10, 2012. The female tenant is deemed to have been served with the Notice of hearing package on the 5th day after mailing.

The tenant confirmed receipt of the landlord's application on October 29, 2012, upon return from a vacation.

The landlord confirmed receipt of the tenant's application and hearing package on October 29, 2012.

Preliminary Matters

The landlord confirmed receipt of a 25 page evidence submission taped to the landlords' door; received on November 5, 2012.

The tenant confirmed receipt of a 10 page submission given to him on November 5, 2012. The landlord stated that the female respondent was given this evidence.

The tenant confirmed receipt of 4 or 5 hand-written pages that were supplied by the landlord, with the application. The 4 pages confirmed received by the tenant were considered; the 5th page the landlord gave to the Residential Tenancy Branch was set aside.

The landlord confirmed that he did not serve the tenant with copies of utility bills, as he had given the tenant those documents in September. As those bills were not served to each respondent, as required by the Rules of Procedure, I set that portion of the landlord's evidence aside. The landlord was at liberty to make oral submissions in relation to any written evidence that was set aside and not considered.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid utilities?

Is the landlord entitled to a monetary Order for unpaid utilities and telephone costs?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

Background and Evidence

The landlord has made the following claim for compensation on the application:

Shaw extreme internet, sports channel	520.83
TOTAL	\$689.84

The tenant confirmed receipt of a hand-written breakdown of costs claimed by the landlord, which was submitted as evidence:

Telephone to August 23, 2012	143.74
Sports channel 17 months X \$14.99 + \$7.50 tax	293.81
TOTAL	\$633.55

The parties agreed that the tenancy commenced on February 1, 2011, rent is currently \$2,086.00, due on the first day of each month. The parties also agreed that the tenants were to pay \$200.00 per month for utilities.

A deposit in the sum of \$1,000.00 was paid on January 8, 2012; the tenancy agreement indicated the pet deposit was included with the security deposit.

The tenancy agreement addendum, referenced on page 4 of the tenancy agreement, indicated there was a 3 page addendum that referenced "pet, utilities, paperwork."

The addendum indicated that the landlord had access to gas services and that his consumption would be insignificant.

The addendum indicated that the landlord resides in 1/3 of the lower level and that his personal consumption of this utility as 1/6th. The addendum goes on to conclude that the tenants will consume the vast majority of gas and electricity and that the:

"ration may include discussion of cable/internet eg L pays cable/internet, T pays elec/gas." (*Reproduced as written*)

The parties also acknowledged, as part of the addendum, that the landlord may consume significant amounts of electricity as part of repairs, but would propose compensation, if necessary.

One page of the addendum indicated:

"Utilities – elc gas cable internet" (*reproduced as written*)

A number of matters related to what may be owed as utilities, were in dispute.

The tenant submitted that included in the \$200.00 per month payment was:

- Cable, including sports channels;
- High speed internet;
- Gas; and
- Hydro.

The landlord submitted that the \$200.00 utilities included:

- Cable, without sports channels;
- Internet, but not high speed;
- Gas; and
- Hydro.

The landlord said that the tenants were not entitled to high speed internet and sports channels; that these items were added as services shortly after the tenancy commenced. The tenant said that the landlord had agreed to provide these services at the start of the tenancy and that it took several weeks, to have them hooked up.

The parties agreed that from February 2011, to October 2012, the tenants have paid \$200.00 month in utilities costs which did include the sports channels and high speed internet; the tenants currently owe November rent and utilities. On September 3, 2012,

the landlord gave the tenants written notice of utilities owed, for the sports channels, the high speed internet costs and telephone costs.

The landlord confirmed that effective mid-August he removed the sports channels from the cable TV service and that he reduced the internet speed; both of which had been services provided since the start of the tenancy. The termination of these services was based on the landlord's belief that these services were enhancements that had not been included as part of the monthly \$200.00 utility fee.

The tenant confirmed that on October 10, 2012; they received a Ten Day Notice to End Tenancy for Unpaid Rent and Utilities, which had an effective date of October 13, 2012. The tenants applied to cancel the Notice on October 9, 2012, as October 8, 2012 was a statutory holiday.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$689.84 in unpaid utilities within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

The tenants supplied a copy of an August 23, 2012, letter signed by the landlord which indicated that the landlord no longer wanted the utility billing to change and that he would accept the tenant's position that the original agreement stand. This note was not raised during the hearing.

The parties also agreed that in April 2012, the tenants had a separate telephone line connected. The tenants did not realize, until they made a billing enquiry in July, 2012, that their phone bills had been going onto the landlord's bill. The tenants had accepted a telephone landline at \$9.95 per month.

The tenants would like the landlord to provide a letter allowing them to have a separate telephone line, so that their bills no longer appear on the landlord's bill.

The landlord has claimed the cost of the telephone bills since August 2012; the tenant said the landlord is charging them the fee owed by the landlord; not the \$9.95 fee they had arranged with the company for the new line installation made in August.

The tenant said that the landlord is now refusing to repair the heat in the rental living room. The landlord stated that he has not repaired the heater in the living room, as he did not think that would be required to do so, given the Notice to End Tenancy had been issued.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

When a tenancy agreement includes a clause that does not clearly expressed, that term may be found to be unenforceable. Section 6(3) of the Act provides:

(3) A term of a tenancy agreement is not enforceable if

(a) the term is inconsistent with this Act or the regulations,

(b) the term is unconscionable, or

(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Therefore, as the tenancy agreement and addendum did not include a term that clearly expressed any increase in utility costs, I find that the utilities were \$200.00 per month.

Therefore, as the tenants paid all utilities owed, in the sum of \$200.00 per month, from February 2011 to October, 2012, I find that the Notice ending tenancy issued on October 3, 2012, is of no force or effect and that the landlords request for an Order of possession and monetary Order for utilities is dismissed. The tenancy will continue until it is ended in accordance with the Act.

The tenants did not require more time to apply to cancel the Notice as the 5th day after service was a statutory holiday; therefore, as they applied on the next possible day; I find that the application was made within 5 days.

In relation to the removal of the sports channel and the reduction of internet speed; I find, pursuant to section 62(3) of the Act, that these were services provided at the start of the tenancy and that they must not be terminated in the absence of proper notice, given in accordance with section 27 of the Act. I have based this decision on the absence of any indication since the start of the tenancy in February 2011 that these services were anything but provided as part of the total costs paid each month by the tenants. The landlord may terminate these types of services, in accordance with the Act, but the total payment to the landlord each month must be reduced by the value of the loss of service.

Therefore, as the landlord was not entitled to remove the sports channels and high speed internet service, I find, pursuant to section 62(3) of the Act, that the landlord must:

- Immediately reconnect the high speed internet and sports channels that were terminated by the landlord.

The tenant confirmed that November rent and utilities have yet to be paid; they were waiting for the outcome of this hearing. As when a landlord is required to make repairs to the living room heat, a tenant must pay rent when it is due. Therefore, pursuant to section 62(3) of the Act, I Order:

- the tenants to pay their November rent and utilities forthwith.

As the landlord confirmed that he has not repaired the living room heat, I Order the landlord to:

- immediately make repairs to the heater in the living room.

In relation to the claim for telephone costs from April 2012, to this date; I find that the landlord has failed to prove, on the balance of probabilities, that the tenants owe \$169.01 for telephone services. The landlord did not supply copies of any bills showing that this cost was incurred. However, I have accepted the tenant's submission that in mid-April 2012, they did have a telephone line hooked up and that in until July that they realized they could not be billed separately and that the landlord was being charged. In the absence of evidence supporting the landlord's submission of the amount of the bill, I find that the telephone costs were \$9.95. per month, plus HST.

Therefore, based on the acknowledgment of the tenant, I find that the landlord is entitled to compensation for telephone costs from April to November, 2010 in the sum of \$79.60 plus \$9.55 taxes. The balance of the claim for telephone costs is dismissed.

Telephone costs were not included as utility costs, and non-payment cannot be considered as a reason to end this tenancy via a 10 Day Notice for Unpaid Utilities.

As the tenants do not wish to have their telephone bills appear on the landlord's bill, pursuant to section 62(3) of the Act, I Order the landlord to:

- immediately provide the tenant's with a written letter which confirms they may have a telephone provider install an independent telephone line to the tenant's rental unit. This decision will put into the place the rights of the landlord; he will no longer have bills incurred by the tenants, appearing on his personal telephone bill.

As each party's application has some merit, I decline filing fee costs to either.

Based on these determinations I grant the landlord a monetary Order for \$89.15. In the event that the tenants do not comply with this Order, it may be served on the tenants,

filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court

Conclusion

The 10 Day Notice to End Tenancy for Unpaid Utilities issued on October 3, 2012, is of no force and effect.

The request for an Order of possession and monetary compensation for utility costs is dismissed.

The landlord is entitled to compensation for telephone bills in the sum of \$89.15.

The landlord has been Ordered to immediately reconnect the sports channels and high speed internet; to issue the tenants a letter authorizing the installation of a separate telephone line to the rental unit and to make repairs to the living room heat.

The tenants are to immediately pay November 2012 rent and utilities in the sum of \$2,000.00 plus \$200.00 utilities.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 14, 2012.

Residential Tenancy Branch