



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC RR FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on November 16, 2012, to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to allow the Tenant reduced rent for repairs, services, or facilities agreed upon but not provided, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Tenant and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Tenant be granted a Monetary Order?

Background and Evidence

The Tenant submitted documentary evidence which included, among other things, copies of: a natural gas notice of disconnection; a hotel bill, and the tenancy agreement.

The Landlord advised that he had submitted evidence which included copies of e-mails to the Tenant, 10 Day Notices for unpaid rent and utilities, a receipt, and a hydro bill; however, this evidence had not be placed on the file so was not in front of be during this proceeding.

The parties entered into a written month to month tenancy that began on December 1, 2010. Rent is payable on the first of each month in the amount of \$1,175.00 and on December 1, 2010 the Tenant paid \$587.50 as the security deposit. The tenancy agreement did not include utilities.

The Tenant stated that on November 13, 2012 her hydro was turned off and on December 2, 2012 her natural gas service was cut off. She advised that the rental unit had electric heat and the water was provided by electric pump which meant when the electricity was turned off she had no heat, no water, and no hot water. She stated that she contacted the Landlord when the electricity was cut off and he refused to have it turned back on until she paid him the \$600.00 arrears and the reconnection fee.

The Tenant submitted that she could not put the hydro in her name due to a previous outstanding debt so on November 16, 2012, when the hydro was cut off, she decided to go stay in a hotel. She was able to get hydro services put in her name by November 23, 2012 and incurred hotel costs from November 16, 2012 to November 23, 2012 which she is seeking to have reimbursed.

The Tenant advised that the natural gas service was also cut off. She stated that she found out that the Landlord had cut off the natural gas in July 2011 and somehow it remained in service until December when the natural gas company determined there was no account set up. Once the natural gas company determined there had been no account set up they shut off the natural gas service on December 2, 2012. She argued that the hydro and natural gas services were simply cut off with no notice. The hydro was reconnected November 23, 2012 however the natural gas remains turned off.

When I asked the Tenant how the hydro and natural gas bills were managed during the first two years of this tenancy she advised she would pay the Landlord \$100.00 here and there whenever he requested payment. She stated that she was only ever given copies of two invoices during that time and the Landlord continued to ask her to put the hydro into her name. She attempted to put it in her name but both companies required a new tenancy agreement but the Landlord refused to provide her with one.

The Landlord advised that he requested the Tenant put the utilities into her name from the beginning of the tenancy but she kept refusing to do so. She would pay the bills as they came and he continued to tell her to put them in her name. Then in the summer of 2011 he told the Tenant he was going to cancel the accounts and shortly after he stopped receiving invoices so he assumed the Tenant had set up an account.

The Landlord stated that on February 25, 2012 the Tenant requested he provide her with a tenancy agreement in someone else's name so she could get the utilities hooked up in that name and on that person's account. The Landlord refused as he did not know that person.

In July 2012 the Tenant called him to advise she heard a loud bang and there was a problem with the hydro. She called the hydro emergency number and when they attended the unit they told her it was a problem inside the house and they had to get an electrician which the Landlord arranged. It was during that visit that the hydro company determined that no one was being billed for the hydro at the rental unit from August 2011 to July 2012 so they put the hydro into the Landlord's name immediately. It was

shortly after this that the Tenant stopped paying the Landlord for the hydro bills so he told her he was going to get the service shut off.

The Landlord submitted that on October 13, 2012 he sent the Tenant an e-mail informing her that the hydro would be shut off at the beginning of November 2012 if she did not put the account in her name and pay the arrears of \$324.18. She refused and the hydro was cut off.

The natural gas company also found out that there were no bills being issued for the property from July 15, 2011 onward so on December 2, 2012 the natural gas was turned off.

The Tenant confirmed she requested the Landlord provide her with a new tenancy agreement in her friend's name so she could get utilities set up in her friend's name. She claims she never received an e-mail from the Landlord informing her that hydro would be cut off and she only ever communicated with the Landlord in person until recently when they have had a few text messages. The Tenant said a second that she had never communicated with the Landlord by e-mail. The Tenant advised that the hydro was reconnected in her name however the natural gas remains disconnected.

The Landlord advised that he has had e-mail communications with the Tenant in the past. I issued the Landlord a verbal Order during the hearing to submit evidence consisting of copies of e-mail communication with the Tenant.

Analysis

On December 20, 2012, the *Residential Tenancy Branch* received evidence from the Landlord, as Ordered, which included e-mail communications between the Landlord and Tenant. A second package of evidence was matched to the file on December 20, 2012 and was stamped received by the *Residential Tenancy Branch* on December 18, 2012. It included copies of e-mails to the Tenant, 10 Day Notices for unpaid rent and utilities, a receipt, and a hydro bill. Copies of the Landlord's evidence are attached to this decision to ensure the principles of natural justice are upheld.

I have carefully considered all documentary evidence and testimony and on a balance of probabilities I find as follows:

I favor the evidence of the Landlord who stated the Tenant was paying the utility bills during the first fourteen to sixteen months of the tenancy and after numerous requests to have the utilities put in the Tenant's name she requested that he provide her with a tenancy agreement in someone else's name so she could get the utilities hooked up in that person's name. The invoices stopped being issued to the Landlord and it was not until the Tenant called the hydro emergency number for repairs that they determined the bills were not being generated so the account was put in the Landlord's name. Shortly after the Tenant began to fall behind on the utility payments so the Landlord sent her an

e-mail to advise the hydro would be turned off. Then the natural gas company found out that their billings were not being issued and they cut off service on December 2, 2012.

I favored the Landlord's above evidence over the Tenant's evidence and testimony because his evidence was forthright and credible. I find the Tenant's explanation of what transpired with the utility accounts over the past two years to be improbable given the circumstances presented to me during the hearing. I make this finding in part because of the following:

- The Tenant acknowledged that her tenancy agreement did not provide utilities and that the Landlord continued to ask her to put the utilities into her name but she could not because of a previous debt she had with the utility companies.
- She said she never saw a utility bill and only paid "\$100.00 here and there" towards utilities throughout a two year period; which I find to be improbable as the Landlord would not have continued to pay the utilities on her behalf for that length of time.
- She admitted that she asked the Landlord to issue a fraudulent tenancy agreement with someone else's name so that the utilities could be hooked up in that person's name; even though the Landlord refused it was shortly afterwards that the utility bills stopped being issued to the Landlord.
- After the utilities were actually shut off the Tenant was somehow able to get the hydro reconnected, which is questionable considering the above information.
- The Tenant denied that she ever communicated with the Landlord via e-mail yet the Landlord read from e-mails he had received from her during the hearing which he later provided as evidence, as ordered.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

After considering of the above, I accept that the Tenant knew that utilities were not included in her tenancy and that she was required to put the utilities into her name. I find it was the Tenant's failure to pay the utilities, as required by the tenancy agreement, which caused them to be shut off. I do not accept that the Tenant was not provided notice of the shut off; rather the evidence proves the contrary and therefore it is my finding that the Tenant did not do what was reasonable to minimize her loss as she

waited after the hydro was shut off before making the arrangements to have the account allegedly set up in her name.

Based on the above, I find the Tenant has provided insufficient evidence to prove entitlement to a monetary claim for shelter and food. Therefore, the claim is dismissed without leave to reapply.

Considering the previous attempts of the Tenant to have the utilities established in someone else's name, I caution the Landlord that he may want to contact the utility companies and determine if accounts have been established properly to eliminate any future liability again him as owner of the property.

Conclusion

I HEREBY DISMISS the Tenant's claim, without 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: December 24, 2012.

Residential Tenancy Branch