



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, MNDC, OLC, ERP, RP, PSF, LRE, AAT, LAT, RR, FF, O

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for unpaid rent, cancel a Notice to End Tenancy for Cause, for compensation for damage or loss under the Act, regulations or tenancy agreement, for the Landlord to comply with the Act, regulations or tenancy agreement, for emergency and general repairs, to provide services, to restrict the Landlord's right of entry, for the Tenant to have access to the unit, for the Tenant to change the locks in the unit, for a rent reduction for the Tenant, for the Tenant to recover the filing fee and for other consideration.

The Tenant said he served the Landlords with the Application and Notice of Hearing (the "hearing package") by registered mail on August 16, 2013. Based on the evidence of the Tenant, I find that the Landlords were served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance. The Tenant said he sent the evidence package by regular mail to the Landlord on September 17, 2013. The Landlords' agent said they did not receive the Tenant's evidence package as it was sent to the Landlord's address and the Landlords' are out of the country. I accept that the Tenant served the evidence package in accordance to section 88 or the Act.

At the start of the conference call the Tenant said he is amending his application to a monetary claim for unpaid utilities, compensation for the Landlord not providing a notice that he had cancelled utilities and for the filing fee.

I accept the Tenant's amendments to the application.

Issues(s) to be Decided

1. Is there a loss or damage to the Tenant and if so how much and is the Tenant entitled to compensation?

Background and Evidence

This tenancy started on February 1, 2012 as a 1 year fixed term tenancy and then it renewed as a month to month tenancy. Rent is \$1,250.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$625.00 in advance of the tenancy.

The Landlord said he served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated August 2, 2013, but the rent has been paid now and the Landlord has cancelled the Notice to End Tenancy for unpaid rent.

The Tenant said he will be moving out of the rental unit by September 30, 2013 by 1:00 p.m. in compliance to the settlement agreement dated July 15, 2013. The Tenant said the Landlord has been untruthful in his actions and in the previous hearing as the settlement agreement says that he will pay the utilities for the Tenant in trade for the Landlord not being required to make repairs to the rental unit. The Tenant said the Landlord has not made any repairs to the unit and the Landlord did not pay the August and September, 2013 utilities. The Tenant said the upper tenant paid the utilities and then he paid the upper tenant his share of the utilities. The Tenant continued to say that he paid \$200.00 and \$202.28 on August 1, 2013 to the upper tenant. The Tenant submitted copy of a paid bill to the upper tenant for August 1, 2013 in the amount of \$402.28. The Tenant requested \$402.28 to be reimbursed to him for utility payment for August and September, 2013 which he said the Landlord is responsible for. In support of this the Tenant submitted a letter from the upper tenant stating the Tenant has paid his share of utilities of 50% for July, August, and September. The letter does not state and amount so it is unclear when it was paid so the evidence is unclear. The Tenant did send in copies of the hydro bill for August 9, 2013 in the amount of \$138.00 and the gas bill for September 12, 2013 in the amount of \$112.00. It appears that these bills represent one month's charges for both rental units.

As well the Tenant requested the Arbitrator to access some compensation for the Tenant due to the Landlords' alleged devious actions and untrue statements to the Tenant and to the previous Arbitrators. The Tenant said he would leave the amount up to the Arbitrator.

The Tenant also requested to recover the filing fee of \$50.00.

The Landlord said the upper tenant requested the services be put in her name in April, 2013 and the transfer did not happen until July, 2013. The Landlord said the upper tenant had control of the transfer, because utility companies will only act on a request from the person whose name the utilities are going into. With that said the Landlord said they are will to reimburse the Tenant for the August and September, 2013 utilities when the bills are given to them or they are willing to pay the Tenant \$194.00 which represents the average cost of utilities for the Tenant's unit for two months. The

Landlord did not submit any utility bills, but said they has been paying the bills since the start of the tenancy and the Tenant's share works out to \$97.00 per month. The Tenant said he did not know the utilities were changing names and he only became aware of the utility situation when he received a cancelation notice from the utility companies in July, 2013. At this time it is the Tenant understands that the upper tenant put the utility services in her name. The Tenant said the Landlord gave them no notice that the utilities would be cancelled. The Tenant submitted the cancelation notice dated July 7, 2013 and effective June 30, 2013.

The Landlord said in closing that they are willing to comply with the settlement agreement dated July 15, 2013.

The Tenant said in closing that he will move out of the rental unit on September 30, 2013 and he wants his security deposit back.

Analysis

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

In this situation the Tenant has not proven the actual loss incurred from the utility charges as those charges are not billed as of yet, but both sides agreed in the previous settlement agreement that the Landlord would pay the Tenant' August and September, 2013 utility expenses in trade for not repairing items in the rental unit. As well both sides agree the Tenant has paid his August and September utility charges. The Tenant says the expenses are \$402.28 and the Landlord said he is willing to pay an average of \$97.00 per month totalling \$194.00. From the evidence submitted by the Tenant it appears that the hydro bill for August, 2013 representing 1 month is \$138.00 and the gas bill for September, 2013 representing one month is \$112.00. Consequently, I find a reasonable amount of compensation to the Tenant based on the actual bills is ($\$138.00 + \$112.00 = \$250.00$) for one month. Therefore at the Tenant's 50% rate for 2 months the compensation equals \$125.00 for August and \$125.00 for September, 2013 for a total amount of compensation to the Tenant for utilities in the amount of \$250.00. I award the Tenant \$250.00 as reimbursement for utility expenses.

Section 27 of the Act says (1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility

I accept the Tenants testimony that the Landlord did not tell the Tenant that the utilities were being cancelled due to the Landlord cancelling his account on June 30, 2013.

Under the Act the Landlord has a responsibility to inform the Tenants of a restriction of services or facilities and utilities are a material term of the tenancy agreement; therefore I find the Tenant has established grounds for compensation from the Landlord. It appears from the receipt information submitted by the Tenant that additional costs were incurred by the Tenant when the utilities were transferred to the upper tenant. It is not clear what the exact costs were as the receipts were not all available or submitted.

Consequently I find a reason amount of reimbursement from the Landlord to the Tenant is \$250.00 for the Landlord not complying with the Act, inconvenience for the Tenant and the Tenant's expenses.

As the Tenant has been partially successful in this matter I order the Landlord to reimburse the Tenant the filing fee of \$50.00.

An additional note to the dispute when the tenancy ends on September 30, 2013 the parties are ordered to handle the Tenant's security deposit as specified in the Act.

Conclusion

A Monetary Order in the amount of \$550.00 has been issued to the Tenant. A copy of the Order must be served on the Landlord: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: September 25, 2013

Residential Tenancy Branch

