



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNR, MNDC, OPR, MNR, MNSD, FF

Introduction

This hearing was scheduled to deal with cross applications. The tenant applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent; and, for compensation for emergency repairs and damage or loss under the Act, regulations or tenancy agreement. The landlord applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid and/or loss of rent; and, authorization to retain the security deposit.

Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The tenant denied receiving the landlord's Application for Dispute Resolution and evidence. The landlord testified that her hearing package was sent to the tenant via registered mail. The landlord had not supplied a copy of the registered mail receipt prior to the hearing and during the hearing she was unable to provide the registered mail tracking number.

The landlord testified that the landlord's hearing package was also served to the tenant in person by a third party (referred to as W in this decision). The landlord provided a telephone number for W and when I called the telephone number provided there was no answer.

The landlord then testified that she had erred and that it was another person (referred to as P in this decision) that had served the landlord's hearing package to the tenant. The landlord provided a telephone number for P and when I called the number P answered. P testified that he had delivered a 10 Day Notice to the rental unit in early September 2013. I asked P whether he had delivered any other documents to the rental unit or the

tenant and P responded that he did not recall serving any other documents. The landlord was given an opportunity to ask P questions; however, I found the landlord's questions to be very leading and I did not permit her questioning to continue.

The tenant acknowledged finding an eviction notice by the door of the rental unit on or about the date P testified as to serving a 10 Day Notice but the tenant maintained that he had not been served with the landlord's Application for Dispute Resolution.

Where service of an Application for Dispute Resolution and other related documents come under dispute, the applicant bears the burden to prove the documents were served. Given the landlord was unable to provide proof of service by registered mail and since P did not corroborate the landlord's submission regarding personal service of the hearing documents, I found the landlord did not provide sufficient proof of service of her Application for Dispute Resolution upon the tenant.

I informed the parties that the landlord's Application was dismissed with leave to reapply and that I would continue to hear the tenant's Application. The landlord became very upset and had to be cautioned about appropriate conduct during a hearing. For the most part, the landlord abided by my instructions with respect to appropriate conduct and I was able to conclude the teleconference call with both parties present.

Issue(s) to be Decided

1. Should the Notice to End Tenancy be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession?
3. Is the tenant entitled to monetary compensation from the landlord?

Background and Evidence

This dispute revolved around payment of rent, Notices to End Tenancy, and hydro consumed by the well pumps.

I was provided the following undisputed evidence by the parties:

- The tenant and a female co-tenant entered into a tenancy for the rental unit starting in June 2012.
- Starting July 1, 2013 the landlord and the tenant entered into a new tenancy agreement so as to exclude the co-tenant since she had moved from the property.

- The tenant is required to pay rent of \$1,650.00 on the 1st day of every month and is responsible for his own hydro account.
- The rental unit and an adjacent house, which is also owned by the landlord, are provided water by way of a common well.
- In July 2013 the tenant determined that a water pipe coming from the well was leaking. The tenant notified the landlord of the water leak and the parties agreed that the tenant would have the leak repaired and bill the landlord for the cost of the repair. The tenant provided the landlord with an invoice for repairing the water leak of approximately \$400.00, including materials and labour, which the landlord paid.

Below, I have summarized the parties' respective positions regarding payment of rent and Notices to End Tenancy.

Unpaid Rent and Notices to End Tenancy

It was undisputed that for the month of August 2013 the tenant withheld a portion of rent; however, I was provided different testimony as to the amount withheld. The tenant testified that he paid one-half of the rent due for August 2013, or \$825.00. The landlord testified that the tenant paid \$650.00 toward the rent for August 2013 and still owes \$1,000.00 for August 2013. Both parties were in agreement that the tenant did not pay any rent for the month of September 2013.

The tenant acknowledged receiving a document near the entry door of the rental unit in early September 2013 indicating the landlord wished to evict him due to unpaid rent (the eviction notice); however, the tenant asserted that it was not a 10 Day Notice to End Tenancy for Unpaid Rent in the approved form.

The landlord asserted that the tenant was given a 10 Day Notice in the approved form indicating the tenant owed \$2,650.00: being \$1,000.00 for August 2013 and \$1,650.00 for September 2013.

I noted that the tenant's evidence package did not include a copy of the eviction notice he received or was seeking to cancel. The landlord asserted that the package the tenant served upon her did not include a copy of the eviction notice either. The tenant acknowledged that he left a copy of the eviction notice out of the evidence packages he served to the Branch and the landlord.

The tenant is of the position that he was entitled to deduct monies from rent for August and September 2013 rent due to "emergency repairs". When I pointed out that the landlord had paid the invoice for the water pipe repair the tenant explained that the water pipe had been leaking for approximately 13 months causing him to incur excessive hydro bills and that the cost of that excessive hydro is recoverable as an emergency repair. The tenant submitted that since the water pipe was leaking the three well pumps that bring water from the well to the two houses were running continuously. The tenant submitted that the water pumps are powered by electricity that runs from his rental unit. In support of this, the tenant confirmed that electrical breakers in his house cut the power to the well pumps.

The tenant had submitted as evidence a letter he addressed to the landlord on July 26, 2013. In the letter the tenant provides two calculations to estimate the amount of hydro used to power the well pumps for the previous 13 months assuming the pumps had been running continuously during that time. Depending on the calculation used, the tenant estimated that over the past 13 months the hydro for the well pumps cost him approximately \$1,954.55 or \$2,352.00. The tenant submitted that he and the landlord had a meeting and he suggested to her that an agreed upon amount be deducted from future rent payable to compensate him for the hydro over-consumption. During that meeting, the landlord became angry and did not agree with the tenant's proposal.

I noted that included in the tenant's evidence package was a Notice to end Tenancy dated August 30, 2013 that the tenant gave to the landlord with an effective date of September 30, 2013. The tenant asserted that he rescinded his notice to end tenancy. In support of this, the tenant submitted that he sent a rent payment to the landlord in early October 2013. The tenant acknowledged that the last he checked the cheque had not been cashed by the landlord.

The landlord stated that she was not in agreement with the rescission of the tenant's notice to end tenancy; that she considers the tenancy at an end; and, that she wants to regain possession of the rental unit. In support of her position, the landlord acknowledged that she received a cheque dated October 1, 2013 in the amount of \$1,378.00. The landlord testified that she does not know what the amount represents. The landlord stated that she has not tried to cash the cheque as she did not want to re-instate the tenancy. The landlord confirmed that any monies she receives from the tenant will be applied toward rental arrears the tenant owes to her and taken into account in her future monetary claims for unpaid rent against the tenant.

Compensation: Hydro for water pumps

Although the tenant was of the position that he was entitled to and did deduct amounts from rent payable for the over-usage of hydro, the tenant has applied for a Monetary Order for the amount of hydro over usage he submits he is entitled to recover from the landlord. During the hearing, I reviewed the tenant's evidence and calculations with respect to his claims regarding hydro consumption and the well pumps. Below, I have summarized the parties' respective positions regarding this part of the tenant's Application.

The tenant asserted that there are three well pumps that provide water to the two houses owed by the landlord. The tenant asserted that the hydro for the pumps is supplied by his hydro connection. The tenant submitted that the water pipe that was fixed on July 24, 2013 had been leaking since the start of the previous tenancy (June 2012), and the three pumps had been running continuously during that time, at his expense. The tenant submitted that the landlord knew of the water leak all that time and did not repair it.

The tenant submitted that the hydro bills were approximately \$185.00 per month prior to fixing the leak and dropped to approximately \$33.00 for a two month period after the leak was repaired. The tenant did not provide copies of hydro bills for periods prior to July 2013. Rather, the only hydro bill the tenant produced with a portion of the first bill he received since opening his own hydro account in July 2013. The bill provided to me shows a total owing of \$676.69 but a detailed breakdown of that amount was not provided. The tenant acknowledged that this bill includes a hydro security deposit.

The tenant supplied a copy of a bar graph from the BC Hydro web-site that depicts his hydro consumption for the period of June 13, 2013 to August 13, 2013. Each bar in the bar graph corresponds to consumption every few days. The graph depicts one significant and obvious spike in consumption near the end of July 2013.

The tenant calculated, using two different methods, that the running of three pumps on a continuous basis for the period of June 2012 through July 2013 cost approximately \$1,954.55 or \$2,352.00. The tenant seeks compensation equal to \$2,352.00 as the loss he incurred to power the pumps continuously since the landlord would not fix the water line.

In addition, the tenant seeks \$120.00 as an estimate of the amount he has incurred in hydro costs to supply water to the neighbouring house. This estimate is based upon an amount of \$0.25 per day.

Finally, the tenant seeks to recover \$450.00 of the security deposit he paid to BC Hydro. The tenant submitted that hydro security deposits are based upon the previous months' consumption and the previous months included excessive hydro consumption due to the water leak. The tenant acknowledged that the security deposit is refundable.

The landlord submitted that she is aware of only two pumps that pump water from the well to both houses. The landlord acknowledged that she was uncertain as to which house provides electricity for the water pumps. The landlord denied knowledge of a leaking water pipe until the tenant notified her of such in July 2013. The landlord argued that the tenant's submission that three pumps had been running continuously for over a year was not supported by the tenant's own evidence showing the hydro consumption.

Finally, the landlord objected to compensating the tenant for hydro paid prior to July 2013 since the hydro account was in the co-tenant's name and paid by the co-tenant.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons with respect to the tenant's Application for Dispute Resolution.

Unpaid Rent and Notices to End Tenancy

It was undisputed that the tenant withheld rent and received an eviction notice for unpaid rent in early September 2013. Although the tenant did not raise the form used by the landlord as an issue in filing his Application for Dispute Resolution or in the details of dispute, the tenant raised this as an issue during the hearing.

It is important to note that section 59 of the Act provides that a party that files an Application for Dispute Resolution is required to provide sufficient particulars as to the nature of their dispute. The Rules of Procedure and other publications provided to applicants provide for service of evidence to the Branch and the other party so as to support their claims.

When a tenant files to dispute a Notice to End Tenancy issued by the landlord I can think of no other document that is more relevant or critical to the tenant's Applicant than a copy of the Notice to End Tenancy the tenant wishes to dispute, especially when the tenant calls into question the form used by the landlord.

While a landlord is required to serve a Notice to End Tenancy in the “approved form” section 10 of the Act provides that “*deviations from an approved form that do not affect its substance and are not intended to mislead do not invalidate the form used.*”

I find the tenant’s failure to provide a copy of the Notice to End Tenancy he sought to dispute given the tenant’s obligation to provide sufficient particulars and supporting documentation to support his position, does not satisfy me that the Notice to End Tenancy he was served should be cancelled due to the form used by the landlord. Therefore, I proceed to consider whether the tenant had a legal right to withhold rent.

Section 26 of the Act provides that a tenant must pay rent in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement; unless, the tenant has a legal right to withhold rent. The Act provides limited circumstances when a tenant may withhold rent.

The tenant submitted that he had a right to withhold rent from the landlord for August and September 2013 due to “emergency repairs”.

The right to deduct an amount from rent for emergency repairs is provided by section 33 of the Act. Section 33 provides several criteria that must be met before a tenant may withhold rent for emergency repairs. In any event, I find the amount that may be deducted must be for the cost of making the repair. I make this finding based upon the wording of section 33(1) which defines an emergency repair as a repair that is

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,

[my emphasis added]

I find that in order to be recoverable as an “emergency repair” the amount must be sufficiently related to the actions of making the repair.

I find the tenant’s actions and costs incurred to stop the water pipe from leaking, including digging up the pipe, patching or replacing a section of pipe, calling in a plumber and reinstalling the pipe, are sufficiently related to making the repair and consistent with the definition of an emergency repair. Based upon the undisputed submissions presented to me, the landlord did compensate the tenant for these costs

upon presentation of an invoice. However, I find the hydro consumed by the well pumps in the previous 13 months is not a cost of making the emergency repair.

In light of the above, I find the tenant did not establish a right to withhold rent due to “emergency repairs”.

The tenant also gave the landlord a written notice to end tenancy with an effective date of September 30, 2013 which the landlord had accepted. Although the tenant communicated to the landlord that he wished to rescind his notice, a notice to end tenancy cannot be withdrawn or rescinded unilaterally. Rather, withdrawal of a notice requires agreement by both parties. This is provided in Residential Tenancy Policy Guideline 11: *Amendment and Withdrawal of Notices*.

Section 66(2) of the Act provides that I, as delegated authority of the Director, may extend a time limit for paying unpaid rent where the tenant believed the deduction made was for an emergency repair. I have considered this provision and have decided not to give an extension of time to pay the unpaid rent given the following considerations:

- The tenant had approached the landlord to submit his position regarding hydro-over consumption and the landlord clearly rejected his position, yet the tenant decided to deduct monies from rent anyway;
- Since the co-tenant left and a new tenancy started July 1, 2013 with the tenant alone the tenancy has been very problematic;
- The tenant gave the landlord a notice to end tenancy; and,
- Given the obvious acrimonious between the parties it is unlikely this tenancy will be successful in the future.

In summary, the tenant failed to demonstrate that the Notice to End Tenancy he received should be found invalid due to the form of the Notice; and, the tenant failed to establish a right to withhold rent for emergency repairs. Therefore, I find the tenant did not establish a basis for me to grant his request to cancel the Notice to End Tenancy for unpaid rent and I dismiss that portion of this Application.

Having dismissed the tenant’s request to cancel a Notice to End Tenancy, I grant the landlord’s oral request for an Order of Possession pursuant to section 55 of the Act. With the landlord’s copy of this decision, I provide the landlord with an Order of Possession effective two (2) days after service upon the tenant.

Compensation: Hydro for water pumps

Upon review of the tenant's documentary evidence concerning hydro consumption, namely the bar graph provided for the period of June 13, 2013 through August 13, 2013 I find the evidence does not support the tenant's assertion that the well pumps were running continuously for 13 months until the water leak was repaired July 24, 2013. Rather, the graph depicts a spike in usage near the end of July 2013 which, I find, is indicative of the well pumps running continuously for a very brief period of time, such as two or three days. Nor did the tenant provide evidence showing that hydro bills were \$185.00 per month, on average, for the previous 12 months. Therefore, I find the tenant's claims regarding hydro over-consumption due to a water leak to be unsubstantiated and I dismiss this portion of his monetary claim.

With respect to the tenant's claim that pumps provide water to the landlord's other rental house, at the tenant's expense, I find the tenant provided a reasonable submission that the hydro for all the well pumps come from one source and that is his hydro connection. Since the landlord was uncertain as to source of the hydro for the well pumps, I accept that the tenant has incurred hydro costs so that the landlord's other tenants are provided water from the common well. As indicated in *Residential Tenancy Policy Guideline 1* where a tenant provides utilities for another rental unit the landlord may be held responsible for compensating the tenant for the usage by the other tenants. I find the tenant's request for compensation of \$120.00 based upon \$.25 per day to be reasonable. As the tenant was a named tenant under the previous co-tenancy I find the tenant has a right to seek compensation from the landlord as any debts or refunds due to or from a landlord are to be apportioned between the co-tenants themselves. Therefore, I grant the tenant's request for compensation of \$120.00.

Finally, with respect to the tenant's request to recover a portion of the hydro security deposit I deny this part of the claim as the deposit is refundable to the tenant by BC Hydro.

Given the limited success of the tenant with this Application for Dispute Resolution, I make no award for recovery of the filing fee paid by the tenant.

In light of all of the above, the tenant is provided a Monetary Order in the sum of \$120.00 to serve upon the landlord and enforce in Provincial Court (Small Claims) as necessary.

Conclusion

The tenant's request to cancel a Notice to End Tenancy has been dismissed and the landlord has been provided an Order of Possession effective two (2) days after service. The tenant has been given a Monetary Order in the amount of \$120.00 as compensation for providing hydro to the well pumps that service another rental unit.

The landlord's Application has been dismissed with 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: October 24, 2013

Residential Tenancy Branch

