



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – CNC, CNR, FF

For the landlord – OPC, OPR, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. This is the third hearing held between these parties this year. The tenants have applied to cancel a One Month Notice to End Tenancy for Cause and a 10 Day Notice to End Tenancy for unpaid rent. The tenants also seek to recover the filing fee from the landlord for the cost of this application. The landlord has applied for an Order of Possession for cause and an Order of Possession for unpaid rent or utilities; and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence although the tenants testify that they have not received any photographic evidence from the landlord. The landlord testifies that the photographs were sent to the tenants as they had the same package as sent to the Residential Tenancy Branch. As I have no evidence to the contrary I will allow the landlord's photographs to be considered in evidence. The parties were allowed to provide some additional evidence after the hearing had concluded. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary issues

The landlord has not provided copies of the 10 Day Notice or the One Month Notice in evidence. The landlord has provided a photograph of the 10 Day Notice which could be read with some difficulty. The One Month Notice was also provided by photograph however this photograph was so small it could not be viewed. Consequently, I am not prepared to deal with the One Month Notice at this hearing as I am unable to determine that it is a valid notice or to consider the reasons given on that notice as they cannot be viewed. As the landlord has not provided a readable copy of the one Month Notice; the landlord's application seeking an Order of Possession for that Notice is cancelled.

Issue(s) to be Decided

- Are the tenants entitled to have the 10 Day Notice to End Tenancy set aside?
- Is the landlord entitled to an Order of Possession based on the 10 Day Notice for unpaid rent or utilities?

Background and Evidence

The parties agree that this tenancy started in April, 2013. The tenant GM testifies that the tenancy started on April 1, 2013 and the landlord testifies that the tenancy started on April 06, 2013. The landlord has provided a copy of the tenancy agreement which shows the date of April 15 having been crossed out and the date of April 06 being added. This alteration has been initialed by the parties. The tenancy is a fixed term tenancy which is due to end on June 30, 2014. Rent for this unit is shown as \$1,750.00 per month on the tenancy agreement however there is also an addendum to the agreement in which the parties agree the rent will be reduced to \$1,650.00 as the tenant do not have use of the garage.

The landlord testifies that the unit was originally advertised for \$1,950.00 however as the tenants agreed to do the yard work the rent was reduced to \$1,750.00. The landlord has provided an addendum to the tenancy agreement which states that the rent was originally \$1,950.00 The tenant and landlord agreed to reduce the rent to \$1,750.00 if the tenant would take responsibility to keep the front and back yard in good shape.

The landlord testifies that the tenants failed to do so. The yard was left in a poor condition throughout the summer. The landlord refers to his photographic evidence showing some weeds, yellow grass, and overgrown shrubs and over hanging trees. The landlord seeks to end the tenancy based on the premises that the tenants now owe this \$200.00 a month rent reduction for six months. The landlord testifies that they had indicated an amount of \$1,200.00 for this back rent plus other amounts for an NSF fee and the cost of light bulbs on the 10 Day Notice served upon the tenants by posting it to their door on October 28, 2013. This Notice shows an amount owed of \$1,383.56 and \$47.43 for utilities. The Notice has an effective date of November 07, 2013 however the landlord is willing to extend this date to December 15, 2013.

The landlord testifies that the tenants failed to pay all their share of the utility bill for the first period they were in the unit from April 06, 2013. The landlord testifies that each unit has its own meter for the upper tenants and these tenants, however, the tenants did not pay \$47.43 of that first bill. The landlord has provided copies of bills in evidence for the period of May 25 to June 30, 2013 and July 01 to September 24, 2013. The bills are in the landlords name and the landlord has made notations on these bills that show the bills are split with a two thirds share to the upper tenants and a one third share to the lower tenants. The landlord has also provided a copy of a cheque made out to the upper tenants for \$189.01. This cheque notes that this is for BC Hydro for April 05 to April 14 and May 25 to June 30. The landlord testifies that this was paid for the lower tenants' share of the electric however the lower tenants only reimbursed the landlord \$141.58 leaving an outstanding balance of \$47.43.

The landlord's witness who is the father of the landlord testifies that he went to speak to the male tenant with the landlord many times about the yard work. They told the tenant that they had spent a lot of money on the yard and if he could not take care of the yard then he was not entitled to a rent reduction. The witness testifies that the tenant said he had a friends he would hire to do the yard if the landlord paid \$200.00 a month for landscaping the tenant would take care of it. Two weeks before the tenants moved in the landlord had the yards landscaped. After the first time the landlord tried to end the tenancy the male tenant got upset and did not do the landscaping for three months. The tenants did not even bother to water the lawn or trim the shrubs. The landlord's witness refers to the tenant's photographs which show a lot of weeds in the grass. The tenant was asked to provide a name for the company he said he used to do the yard work but has not done so. The tenants have provided letters from neighbours however the witness testifies that the landlords are in dispute with these neighbours so the letters cannot be relied upon.

The tenants dispute the landlord's claim concerning the yard work. The tenant GM refers to his photographic evidence which show the yards in a good condition. The tenant also refers to the letters from his neighbours who all attest to the garden being in a good condition as previously it had been allowed to run to weeds. The tenant testifies that they only agreed to maintain the yard not to carry out a landscaping service. The agreement did not involve a gardening service however the tenants did use a company who came every two weeks to cut the grass and the tenants did the rest of the yard maintenance as shown by their photographic evidence. The tenant testifies that the landlord would not even provide a sprinkler and the tenants had to purchase one themselves to ensure the yard was watered.

The tenants dispute the landlord's claim that they owe any rent. The tenant GM agrees they did deduct \$50.00 from the rent as ordered at the last hearing.

The tenants dispute the landlord's claim for unpaid utilities. The tenant testifies that they did not move into the unit until around April 15, 2013. The landlord did allow the tenant to have the keys by April 06, 2013 to move some boxes into the unit however the tenants were charged a prorated amount of \$425.00 for these additional days but were not told they could actually move into the unit. The tenant testifies that they deducted these days from the utility bill as they were not living in the unit using lights, heat or hot water and should not therefore be held responsible for the upper tenants' electricity usage. The tenants have provided a copy of an invoice from U-Haul showing the tenants rented a vehicle from U-haul on April 13, 2013 for their move.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. When a landlord serves the tenants with a Notice to End Tenancy the burden of proof falls to the landlord to ensure sufficient evidence is provided to corroborate the reason to end the tenancy. In this matter the landlord claims that the tenants owe rent of \$1,383.56 and utilities of \$47.43. Consequently, the landlord must show that these are amounts owed are rent and utilities. As the tenants have disputed the landlords claim that they owe rent or utilities then the landlord must provide corroborating evidence to support his claim.

I have considered therefore the landlord's evidence and find that an NSF fee cannot be considered to be unpaid rent. The charge made for lights bulbs cannot also be considered as unpaid rent. Therefore I will consider the arguments concerning the rent reduction of \$200.00 per month for six months to an amount of \$1,200.00. The landlord argues that this should be considered as unpaid rent as the tenants did not fulfill the agreement to maintain the yard and therefore this rent reduction should be recoverable as unpaid rent and should warrant an Order of Possession. The tenants argue that they did maintain the yard as shown in their photographic evidence.

I have considered both arguments and find that the tenancy agreement and addendum shows that rent was reduced to \$1,650.00 from \$1,750.00 which was a reduction of

\$100.00 for the loss of use of the garage. Another addendum shows that the unit was advertised at \$1,950.00 and the rent was reduced by \$200.00 for yard work. However as this was an agreement and I am not satisfied that the tenants did not maintain the yard to a reasonable degree then the landlord would have to first prove that the yard was not maintained at all and from the evidence before me I am not satisfied that the landlord has meet this burden of proof.

Consequently, I cannot determine that the landlord may consider the \$200.00 per month for six months to be unpaid rent as this was an amount agreed between the parties for yard work. The landlord's application for an Order of Possession on this ground is therefore unsuccessful.

With regard to the landlords claim for unpaid utilities; the landlord argues that the tenancy started on April 06, 2013 and the tenancy agreement initialed by the parties confirms this. However, the tenants argue that they did not move into the unit until April 15, 2013. However, the tenants' evidence provided shows the date of April 13, 2013. As the parties' evidence and testimony are contradictory then the landlord would have to provide corroborating evidence to show the date the tenants actually started to live in the unit and use electricity. The landlord has contradicted his own testimony as the landlord has submitted a written statement which says the two units have separate meters. However the bills provide contradict this and show that the bills are divided between the two sets of tenants. I therefore find the landlord's testimony in this matter to lack credibility. Furthermore the landlord has not provided a utility bill for the period including April, 2013 and without a copy of the utility bill for this period I am not prepared to find in favour of the landlord's application for an Order of Possession based on unpaid utilities.

Conclusion

The tenants' application is upheld. The 10 Day Notice to End Tenancy dated October 28, 2013 is cancelled and the tenancy will continue. As the tenants have been

successful in setting aside the Notices, the tenants are entitled to recover their **\$50.00** filing fee for this proceeding and may deduct that amount from there next rent payment when it is due and payable to the landlord.

The landlord's application is dismissed in its entirety 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: November 27, 2013

Residential Tenancy Branch

