



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR CNL OPR OPL OLC PSF MNDC FF

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) To cancel notices to end tenancy for unpaid rent and/or for landlord's use of the property pursuant to sections 46 and 49;
- b) For a monetary order as reimbursement for utilities and services that were withdrawn contrary to section 27 of the Act;
- c) To recover the filing fee for this application.

Service:

The Notice to End Tenancy for unpaid rent is dated December 2, 2013 to be effective December 13, 2013 and the Notice to End Tenancy for landlord's use of the property is dated December 26, 2013 to be effective February 28, 2014; the tenant confirms they were served by posting them on the door. The tenant /applicant gave evidence that he served the Application for Dispute Resolution by registered mail and the landlord agreed he received it. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy for unpaid rent or for landlord's use of the property or has the tenant shown that either or both notices to end tenancy should be set aside and the tenancy reinstated? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Has the tenant proved on the balance of probabilities that utilities, cable and internet and laundry were included in the lease and have been withdrawn by the landlord contrary to section 27? If so, how much should he be compensated?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in July 2012 when the landlord bought and moved into the property. The rent was \$650 at the time and the landlord raised it to \$690 in September 2013 when the tenant had a girlfriend move into the property and he realized the rent was not high enough to cover his costs. Both parties agree that no agreements were made in writing until the tenant signed he would agree to the landlord's demands to pay half the utilities in addition to the increase in rent if the landlord allowed him to stay until the end of June 2014. However, the undisputed evidence is that the tenant paid utilities in September and October but then refused to pay in future. The landlord claimed \$107 in utilities were outstanding as of December 1, 2013 so the landlord served a Notice to End Tenancy.

He served a second Notice to End Tenancy for landlord's use of the property. He gave sworn evidence that he needed the whole house for his own use as he has two daughters who visit plus a lot of sports equipment and tools for which he needs storage. He said the tenant has the outside storage area. The tenant contended that the landlord did not need his unit as he already rents one room upstairs; the landlord said that he rents a room for additional income but needs the whole basement which the tenant occupies for his daughters to play and so he may store his equipment. He said he realizes that he must give the tenant one month free rent under this section 49 Notice.

The tenant claims compensation for withdrawal of facilities which were originally included in his rent. He claims

1. \$51 for hydro paid in October, \$20 for gas,
2. \$43 for basic cable and \$35 for high speed internet plus taxes for 4 months as he has to pay this himself. He provided no invoice showing the taxes on this.
3. \$15 laundry twice a month as he is locked out of the laundry room since Dec. 1, 2013. (\$30 x two months –Dec. & Jan.); the landlord said he had locked the door since utilities were not paid.
4. \$10.49 for registered mail

Included with the evidence are copies of the two Notices to End Tenancy, utility bills, handwritten demands from the landlord, a bank record of the tenant showing he paid \$690 a month in rent since January 2013, a letter from the cable company outlining the charges and a letter from the landlord stating that the tenant must also pay one half of the utilities commencing September 1, 2013 and supply his own cable as of October 1, 2013.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

The onus is on the landlord to show that he has cause to evict the tenant for either unpaid rent/utilities or for his own use of the premises. I find the preponderance of the evidence is that the tenancy agreement, although informal and unwritten, included utilities and this arrangement was arbitrarily changed by the landlord on September 1, 2013 although the tenant disagreed and reluctantly signed the statement of the landlord. I find the tenant in the tenancy agreement was not responsible to pay utilities and he did pay rent as agreed in the amount of \$690; I set aside the Notice to End Tenancy for unpaid utilities.

In respect to the Notice to End Tenancy for landlord's use of the property, I find the landlord's evidence credible that he needs the basement area which the tenant occupies for his own use as he has two daughters and a lot of equipment for which he has no storage. Although the tenant contended that the landlord rented a room in his home and could use it instead, I find it credible that the landlord prefers to reclaim the use of the basement which would give him a lot more room. Therefore, I find the landlord pursuant to section 55 and his request in the hearing, entitled to an Order of Possession effective February 28, 2014.

On the tenant's claim, I find he has satisfied the onus of proving on a balance of probabilities that certain facilities and utilities were included in his tenancy agreement and then withdrawn on September 1, 2013 contrary to section 27 of the Act. The landlord did not deny the events but stated that it was costing him too much money. Therefore, I find the tenant entitled to a refund of \$51 for hydro, \$20 for gas and \$60 for loss of laundry for two months. I find he had to pay \$78 a month for cable and internet to replace these services from October 1, 2013; these were originally included in the tenancy agreement. I find him entitled to \$312 in total as compensation for these costs also. I decline to calculate tax on the cable and internet and no invoices were provided.

I find the tenant not entitled to compensation for service of the documents by registered mail. Section 72 authorizes recovery only of the filing fee for the arbitration process and I find him entitled to recover \$50 for the filing fee.

Conclusion:

I find the landlord entitled to an Order of Possession effective February 28, 2014 for the reasons stated above.

I find the tenant entitled to a monetary order as calculated below and to recover his filing fee for this application.

Calculation of Monetary Order:

Hydro Oct. 1 paid	51.00
Gas paid	20.00
Laundromat for withdrawal laundry	60.00
Cable and Internet costs for 4 months	312.00
Filing fee	50.00
Total monetary order to Tenant	493.00

A monetary order is issued to the tenant. If the tenant has not paid rent for January 2014, this order may be collected by deducting \$493 from his monthly rent of \$690. If he has paid rent for January, this Order may be enforced through the Small Claims Court of BC as stated in the Order attached.

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: January 14, 2014

Residential Tenancy Branch

