



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0851927 BC Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant – CNR, O

For the landlord – OPR, MNR, MNSD, FF, O

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenant's security deposit; other issues; and to recover the filing fee from the tenant for the cost of this application. The tenant applied to cancel the 10 Day Notice to End Tenancy for unpaid rent and other issues.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other 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. All evidence and testimony of the parties has been reviewed and are considered in this decision.

At the outset of the hearing the parties advised that the tenant is no longer residing in the rental unit, and therefore, the landlords withdraw their application for an Order of Possession. As the tenant has vacated the rental unit prior to the hearing, the tenant's application to cancel the Notice no longer has any merit and is therefore dismissed.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for unpaid rent and utilities?

- Are the landlords permitted to keep all or part of the security deposit?

Background and Evidence

The parties agree that this month to month tenancy started on August 01, 2013 although the tenants moved into the unit a few days earlier. Rent for this unit was \$775.00 per month plus Hydro. Rent was due on the first day of each month. The tenant paid a security deposit of \$350.00 on or about July 01, 2013. The tenant vacated the rental unit on March 31, 2014 and provided a forwarding address in writing on April 14, 2014.

The landlords testify that the tenant failed to pay rent for March, 2014 of \$775.00. The tenant was served a 10 Day Notice to End Tenancy for unpaid rent (the Notice) in person on March 04, 2014. The Notice informed the tenant that there was outstanding rent of \$775.00 and outstanding utilities of \$189.45. The Notice was effective 10 days later on March 14, 2014 although the landlords had omitted this date on the Notice.

The landlords testify that the tenant did not pay the outstanding rent or utilities within five days. The landlords testify that since the Notice was issued the landlord s have received another utility bill. The landlords have provided copies of all the utility bills to the tenant with a request for payment to be made. The outstanding utility bills are now \$248.80:

October 03 to November 05, 2013 of \$67.69

December 04, 2013 to January 13, 2014 of \$121.76

January 13, to March 12, 2014 of \$59.35.

The landlords request to apply the security deposit to the outstanding rent and utilities and seek a Monetary Order for the balance of \$673.80. The landlords also seek to recover the \$50.00 filing fee paid for this proceeding.

The tenant does not dispute that she owes rent for March, 2014. The tenant disputes however that she owes utilities as claimed by the landlords. The tenant testifies that she had paid \$67.69 in cash to the landlords sometime in October, 2013 however the landlords did not provide receipts. The tenant testifies that regarding the amount of \$121.76 the tenant paid \$100.00 in December, 2013 and \$95.00 was paid sometime in January, 2014. This gave the tenant a

credit. The tenant testifies that the last bill for \$59.35 was not received by the tenant until she got the landlords' evidence package and this has not been paid. The tenant testifies that the landlord RH told the tenant she was up to date with utilities and that the next bill she would owe would be December. The tenant testifies that she got confused by the landlord as to which bills she had paid as the landlords would not provide receipts.

The landlord disputes the tenant's testimony. The landlord RH testifies that they get the bills each month around the 27th or 28th of each month. The bills are given to the tenant on the 1st of each month and the landlord writes on the bills what has been paid so the tenant is aware. If the tenant gets behind on the utilities this is marked on the next bill so the tenant is aware of the amounts outstanding. The landlord refers to the utility bill for September 05 to October 03, 2013 for \$193.63 and testifies that the tenant paid \$100.00 and \$95.00 towards this bill in December and January and the tenant is confusing this bill payment with another bill. The landlord agrees that the last bill was given in their evidence package as they only received it after the tenant moved out. The landlord RH, disputes telling the tenant that she was all caught up with her utility payments.

The tenant testifies that she had verbally told the landlords to keep the security deposit towards the rent for March. The tenant testifies that she always paid the landlord the cash and he would not provide receipts. The tenant testifies that when she got confused the landlord threatened the tenant. The tenant's father called the landlord but the landlord made it clear that he would not follow the processes.

The tenant requests that I hear a claim for a loss of quiet enjoyment of her rental unit. The tenant has not filed a claim under Money owed or compensation for damage or loss.

Analysis

The tenant requested that I consider a claim for a Monetary Order against the landlords for a loss of quiet enjoyment of the rental unit. In the absence of a formal and proper application for that issue, I declined to hear or determine that issue, as to do so, in my view, would not be in keeping with the principles of natural justice as to the requisite process and notice regarding claims in this process

I have carefully considered all the relevant evidence before me, including the sworn testimony of both parties. Section 26 of the *Act* states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant agrees that there is outstanding rent for March; consequently I uphold the landlords claim to recover unpaid rent of **\$775.00**. With regard to the landlords claim for unpaid utilities of \$248.80; I am satisfied with the evidence before me that the tenant owes utilities for three periods of:

October 03 to November 05, 2013 of \$67.69

December 04, 2013 to January 13, 2014 of \$121.76

January 13, to March 12, 2014 of \$59.35.

The tenant has testified that the first two utility bills were paid however the tenant has insufficient evidence to meet the burden of proof that she did pay these bills and the landlords evidence supports their claim that these bills have not been paid. Consequently I uphold the landlords claim to recover unpaid utilities of **\$248.80**.

I Order the landlords to keep the security deposit of **\$350.00** pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the landlords' monetary award.

I further find the landlords are entitled to recover the filing fee of **\$50.00** from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order had been issued to the landlords pursuant to s. 67 and 72(1) of the *Act* as follows:

Unpaid rent	\$750.00
Unpaid utilities	\$248.80
Filing fee	\$50.00
Less security deposit	(-\$350.00)
Total amount due to the landlords	\$698.80

Conclusion

The tenant's application to cancel the Notice is dismissed without leave to reapply.

I HEREBY FIND in favor of the landlords monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$698.80**. The Order must be served on the respondent. Should the respondent fail to comply with the Order, the Order may be enforced through the Provincial Court as an Order of that Court.

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: April 29, 2014

Residential Tenancy Branch

