



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LANDLORD: OPB, OPR, MNR, MNSD, FF
TENANTS: CNR, MNDC OLC, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking an Order of Possession, a monetary order for unpaid rent and utilities, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenants filed to obtain an order to cancel the Notice to End Tenancy, for compensation for loss or damage under the Act, regulations or tenancy agreement, for the Landlord to comply with the Act and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenants were done by personal delivery and registered mail on April 4, 2014 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by registered mail on April 9, 2014 in accordance with section 89 of the Act.

Both parties confirmed the receipt of the other parties' hearing package.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to an Order of Possession?
2. Is there unpaid rent or utilities and if so how much?
3. Is the Landlord entitled to compensation for unpaid rent or utilities and if so how much?
4. Is the Landlord entitled to retain the Tenants' security deposit?

Tenant:

1. Are the Tenants entitled to an order to cancel the Notice to End Tenancy?
2. Has the Landlord complied with the Act?
3. Do the Tenants have a loss or damage and if so how much?
4. Are the Tenants entitled to compensation for loss or damage and if so how much?

Background and Evidence

This tenancy started on October 1, 2012 as a fixed term tenancy with an expiry date of October 1, 2013. In that tenancy agreement it indicates that the tenancy could continue on a month to month basis or for another fixed term at the end of the agreement on October 1, 2013. The tenancy ended October 1, 2013 and the tenancy did renew or continue on a month to month basis for October, 2013 and then a new tenancy agreement for a 1 year fixed term was signed by the parties on November 1, 2013. Rent in the first agreement was \$1,100.00 with utilities included and rent in the second agreement was \$1,200.00 and utilities were not included. The Tenants paid a security deposit of \$550.00 on October 4, 2012. As well the Tenants' paid their last month rent of \$1,100.00 at the start of the tenancy. This payment was applied to May, 2014 rent.

The Landlord said that the Tenants did not comply with the new tenancy agreement dated November 1, 2013 to pay rent of \$1,200.00 per month and to pay the utilities on the property. As a result the Tenants have unpaid rent of \$100.00 per month for 7 months and \$2,013.00 in unpaid utilities. The Landlord said when the Tenants did not pay her these amounts she issued a 10 Day Notice to End Tenancy for Unpaid rent or utilities dated April 1, 2014. The Landlord said her monetary claim is for \$2,713.00 for unpaid rent and utilities. The Landlord continued to say that she is also requesting to retain the Tenants' security deposit as partial payment of the unpaid rent or utilities and the Landlord requested to recover the filing fee of \$50.00.

Further the Landlord said she does not want to continue the tenancy and the Landlord requested an Order of Possession for as soon as possible if her application is successful or the Tenants application is unsuccessful.

The Tenants said they did sign the new tenancy agreement, but they did not understand it completely and so they phoned the Landlord to tell her they did not agree with it. Specifically the Tenants did not agree with a rent increase of \$100.00 as there was no proper notice of rent increase and that they were not willing to be responsible for the utilities. The Tenant said the Landlord agreed to go back to the original tenancy agreement with rent of \$1,100.00 and the Landlord would pay the utilities. The Tenant said this verbal agreement was made right after the tenancy agreement was signed in early November, 2013 and they did not hear from the Landlord again until March, 2014. The Tenants said in March, 2014 the Landlord demand additional rent and for the Tenants to pay all the back utility charges. The Tenants said this is not what they verbally agreed to in November, 2014.

The Landlord said there was no agreement to change the second tenancy agreement and she did not agree to go back to the terms of the first tenancy agreement. The Landlord said the Tenants chose to go back the first tenancy agreement on their own. The Landlord continued to say that she did not send any written notices or warnings from November, 2013 to March, 2014, but the Landlord said she did talk to the Tenants by phone. The co-owner of the property D.L. said that she remembered the Landlord phoning the Tenants in December or January and maybe in February, 2014 and the Landlord left messages on the answering machine. The Landlord said that because the Tenants could not afford to put the utilities in their names the utilities stayed in the Landlord's name and the Landlord said there was a verbal agreement with the Tenants to pay \$280.00 per month for utilities. The Tenants said there was no agreement to pay the utilities.

The Tenants said they had no contact with the Landlord from November, 2013 until the end of March, 2014.

The Tenants continued to say in closing that the Landlord agreed to go back to the terms of the original tenancy agreement dated October 1, 2012 and the Landlord did not send any notices or warning about unpaid rent or utilities to the Tenants until March, 2014. As well the Tenants said they did not receive any information about the utility bills until March, 2014 so even if they had agreed to pay the utilities, which they did not, they did not know how much the utilities were. The Tenants said they have incurred costs living in the rental unit and so they want compensation in the same amount as the Landlord originally applied for in the amount of \$1,997.34. The Tenants did not provide any corroborative evidence to support their monetary claim.

The Landlord said in closing that she wants to end the Tenancy as soon as possible because the Tenants have unpaid rent and utilities and the Tenants signed the new tenancy agreement state the rent was \$1,200.00 and the utilities were not included in the rent so the Tenants are responsible for \$700.00 of unpaid rent and \$2,109.00 in utilities.

The Parties were offered an opportunity to settle this matter by mutual agreement. The Landlord offered the Tenants a full settlement of the dispute if the Tenants move out by May 31, 2014 and paid the Landlord \$1,500.00. The Tenants declined the Landlord's offer and the Parties agreed to resolve the dispute by the Arbitrator's decision.

Analysis

The initial dispute of this situation is whether the tenancy agreement dated November 1, 2013 or the tenancy agreement dated October 1, 2012 governs the tenancy. The Landlord said the Tenants signed the new agreement and therefore it is in effect. The Tenants said they made a verbal agreement with the Landlord to go back to the first agreement therefore they are not responsible for additional rent or utilities and the rent increase is not in compliance to the Act. On reviewing the tenancy agreement dated October 1, 2012 the renewal clause indicates the tenancy can be renewed or continue on a month to month basis or another fixed length of time. As the tenancy did renew for the month of October 2013 as a month to month tenancy and then for another year with the tenancy agreement dated November 1, 2013; I find the Tenants have established grounds to show the tenancy continued from first tenancy agreement and therefore was subject to legislated rent increases and the proper process to apply a rent increase. The Landlord did not give the Tenants proper notice of a rent increase therefore I dismiss the Landlord's claim for unpaid rent as the rent increase in the tenancy agreement dated November 1, 2013 did not comply with the Act and consequently is invalid. The Landlord's claim for \$700.00 in unpaid rent is dismissed without leave to reapply.

My ruling on the rent increase being invalid does not invalidate the entire tenancy agreement dated November 1, 2013. When parties sign an agreement they are responsible to understand the agreement and when they sign an agreement they are agreeing to its terms unless the terms are invalid. The change in the tenancy agreement dated November 1, 2013 to exclude utilities from the rent amount is a valid change to the rental agreement, but as the Landlord did not provide a formal demand for payment of the utilities to the Tenants each month with a copy of the utility bills and there is no written agreement on the amount the Tenants will pay for utilities, I find the utility issue very unclear as it is just one party's word against the other party's word. In a situation like this it is an Arbitrator's obligation to make a decision on the information available and the most probable outcome based on the balance of probability. In this situation I find the Tenants sign the tenancy agreement dated November 1, 2013 excluding utilities from the rental amount and the exclusion of the utilities from the rent payment is documented in the agreement; therefore I find the Tenants are responsible for some amount of utilities. Again it is unclear as to the amount as the Landlord did not

give the Tenants copies of the utility bills when they were due and the Landlord does not have a written agreement to support the \$280.00 per month claim for utilities the Landlord said they agreed to. As well the Tenants said they were not responsible for the utilities at all. In reviewing the evidence and testimony I find the Tenants signed the tenancy agreement of November 1, 2013, which made them responsible for the utilities. As well I find the Landlord did not handle the utility issue in a responsible manner by providing the Tenants with copies of the utility bills or with a written agreement for \$280.00 per month. Therefore I find a reasonable amount for utilities per month is \$250.00 for 7 month in the amount of \$1,750.00. Consequently, I award the Landlord \$1,750.00 for unpaid utilities.

Further 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

With respect to the Tenants monetary claim of \$1,997.34 I find the Tenants have not provided evidence that proves an actual loss has occurred and they have not verified the loss of damage with paid receipts therefore I dismiss the Tenants' monetary claim without leave to reapply.

The Tenants have also applied to cancel the 10 Day Notice to End Tenancy for unpaid rent or utilities dated April 1, 2014. As I have found the Tenants have unpaid utilities in the amount of \$1,700.00, I dismiss the Tenants request to cancel the Notice to End Tenancy without leave to reapply.

Pursuant to section 55 of the Act when a tenant is unsuccessful in cancelling a notice to end tenancy a landlord may request an Order of possession. As the Landlord has requested an Order of possession and the Tenants have been unsuccessful therefore; I grant an Order of possession to the Landlord for two days after service of the Order on the Tenants.

As the Landlord has been successful in this matter, she is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. Pursuant to section 38 of the Act, I order the Landlord to retain the Tenants' security deposit of \$550.00 as partial payment of the utility arrears. The Landlord will receive a monetary order for the balance owing in the amount of as following:

	Utility arrears:	\$1,700.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$1,750.00
Less	Security deposit	\$ 550.00	
	Subtotal		\$ 550.00
	Balance Owing		\$1,200.00

As the Tenants have been unsuccessful in this matter I order the Tenants to bear the cost of the \$50.00 filing fee which they have already paid.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$1,200.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenant's application is dismissed 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: May 27, 2014

Residential Tenancy Branch

