



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: MNDC, RP, PSF, RR, O
Landlord: OPR, OPC, MNR, FF, O

Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The hearing was conducted by conference call. The landlord and the tenant called in and participated in the hearing.

Issue(s) to be Decided

Should the landlord be ordered to provide services or facilities?
Should the landlord be ordered to make repairs to the rental unit?
Is the tenant entitled to a monetary award?
Should the tenant be granted a rent reduction?

Is the landlord entitled to an order for possession pursuant to a Notice to End Tenancy?
Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

The rental unit is a basement suite in a house in Surrey. The tenancy began on August 1, 2012. The tenant and her former husband were named as tenants and the landlord and his wife were named as landlords in the tenancy agreement. The tenant testified that the electrical service to the rental property has been turned off by BC Hydro and the rental unit has been without power for approximately six weeks. The tenant said that she has been without a working stove for seven months and her internet service, which is supposed to be included in her rent, was cut off five months ago. The tenant requested compensation for food spoiled due to the lack of electricity. She claimed compensation for additional costs incurred because she has not had a functioning stove and she requested compensation because she has not received internet service that

she said was supposed to be included in her rent.. The tenant also claimed a monetary award because she claimed to have paid for fumigation to get rid of fleas and then had to wash all her belongings at a laundromat.

The landlord acknowledged that the electricity has been disconnected. He blamed this on the breakup of his marriage. He said that his wife is on vacation and has been away for the past six weeks. The landlord said that his wife lives in the upstairs portion of the rental property; there is a no contact order in place and he is not permitted to come to the rental property or he will be in violation of the order. The landlord said that his wife was responsible for paying the Hydro account and he is unable to restore the Hydro service to the rental property because the account is in arrears and he does not have sufficient funds to put the Hydro back in service. In his application for dispute resolution the landlord claimed that the tenant owes two months' rent in the amount of \$1,400.00. He said he cannot restore the Hydro unless the tenant pays the outstanding rent. The landlord also said that there is cause for ending the tenancy and he has given the tenant a one month Notice to End Tenancy. He submitted a copy of a one month Notice to End Tenancy for cause dated July 7, 2014. The tenant testified that she has never been served with a Notice to End Tenancy by the landlord. The landlord submitted a statement from nearby occupants, also tenants of the landlord, who complained about the tenant's conduct. The complaint was dated October 5, 2014. The landlord said that he did not proceed with steps to enforce the Notice to End Tenancy because the tenant verbally agreed to move out. The tenant denied that she agreed to move out and reiterated that she had not been given a Notice to End Tenancy.

The landlord submitted as part of his documentary evidence a copy of a Supreme Court Notice of Family Claim brought by the landlord's wife. The claim includes a claim to an interest in the rental property and a copy of a Certificate of Pending Litigation registered against title to the rental property. The landlord said that since the claim was filed, his wife has fired her lawyer and she is currently unrepresented.

The tenant submitted a copy of a written tenancy agreement. The named landlords were the landlord named in this proceeding and the landlord's wife. The tenancy agreement was in the standard form provided by the Residential Tenancy Branch. The agreement did not provide that there were any additional terms, but the tenant submitted a separate sheet of paper, apparently signed by the tenant and by the landlord's wife; it stated that: "July 28/2012 includes cable & internet".

The tenant applied for an order that the landlord repair the stove or supply a working stove and for an order that he supply an essential service, namely electricity. She also

claimed compensation for the landlord failure to provide internet service, a service that she said was included in her rent. The tenant claimed the following amounts as a monetary claim:

• Food lost due to Hydro	\$200.00
• To refill fridge	\$200.00
• Additional food cost (no stove)	\$700.00
• Lack of internet \$50/month X 5 months	\$250.00
• Fumigation and laundry to eradicate fleas	\$150.00
Total:	\$1,500.00

The tenant did not submit any invoices or receipts in support of her monetary claims.

Analysis

The landlord is required to provide a service or facility that is essential to the tenant's use of the rental unit as living accommodation. Electricity is an essential service. Both the named landlord and his wife are landlords under this tenancy. The landlord cannot avoid his obligations under the *Residential Tenancy Act*, because there is a matrimonial dispute between the landlords. Further the landlord is required to provide essential services regardless of whether or not the tenant has paid rent. The landlord's claimed lack of funds is not a valid reason for the failure to provide an essential service. If a tenant fails to pay rent a landlord does not have any right to discontinue an essential service, or to allow it to be discontinued by failing to pay the supplier's account. When a tenant does not pay rent, the landlord's remedy is to take proceedings under the *Residential Tenancy Act*.

The landlord and the tenant agree that she has paid rent for September and October. In his application for dispute resolution, the landlord claimed that the tenant failed to pay rent for two months and requested a monetary order in the amount of \$1,400.00. The landlord testified at the hearing that the tenant failed to pay rent for April and June. He said that the tenant received payments from the Provincial Government for these two months, but she cashed them and did not pay the rent money to the landlord. The tenant denied that this was the case; she said the funds were paid directly to the landlord and she could obtain the records from the Ministry to prove that this was the case.

The landlord has applied for an order for possession pursuant to a Notice to End Tenancy that was dated July 7, 2014, although the landlord did not file his application

for dispute resolution until October 3, 2014. The landlord has not proved that he served the Notice to End Tenancy and he has continued to accept rent payments since the notice was given; I find that the Notice to End Tenancy is invalid and the landlord's application for an order for possession is dismissed without leave to reapply. The landlord will have to serve the tenant with a new Notice to End Tenancy on proper grounds if he wishes to proceed with another application for an order for possession.

With respect to the landlord's application for a monetary order for unpaid rent, the landlord did not specify in his application what rental payments he claimed were unpaid; the tenant was unable to provide evidence to refute the landlord's claim without knowledge of the months that the landlord claimed that the tenant failed to pay rent. I find that the landlord has not provided evidence to prove that the tenant failed to pay rent for the months of April and June. The landlord's claim for unpaid rent for those months is dismissed with leave to reapply. If the landlord does reapply, it will be up to the tenant to provide documents to prove that the payments for those months were made and received by the landlord.

I accept the tenant's testimony that the stove in the rental unit is not working. I order that the landlord have the stove inspected and repaired or replaced, whichever is necessary to provide the tenant with a fully functioning stove and oven. The tenant has claimed damages for loss of use of the stove for seven months. The claim is said to be based on additional food costs that she incurred. The tenant did not provide documents to support such a claim and the tenant has not provided evidence to show that she gave the landlord written notice that there was a problem with the stove before she brought this application for dispute resolution. It was up to the tenant to take steps including written notice to the landlord and an application to the Residential Tenancy Branch if she claimed that repairs were required. The tenant did not make her application until September 30th and I therefore deny her claim for a monetary award for loss of use of the stove.

With respect to the lack of electricity, I order that the landlord have the electrical power to the rental unit restored forthwith. According to her testimony the tenant has been without electrical power for more than a month. I grant the tenant a monetary award for loss of use and enjoyment of the rental unit in the amount of \$350.00, being the equivalent of a half month's rent as compensation for the lack of electricity. The tenant claimed for the loss of food spoiled due to a lack of electricity and for the cost to replace food. There is duplication in these claims. In the absence of documents to establish the claims for lost or spoiled food, I allow the claim, but limit the award to the sum of \$100.00. If the electrical service to the rental unit is not restored on or before November 1, 2014, I grant the tenant a rent reduction of \$350.00 for the month of November. If

power is not restored by November 15, 2014, then the tenant must apply to the Residential Tenancy Branch for an additional remedy.

The tenant claimed compensation for the lack of internet service. The document submitted by the tenant is separate from the tenancy agreement and it is not referred to in the tenancy agreement. The party who is said to have signed it was not present. Based on the evidence supplied, I am not satisfied on a balance of probabilities that internet service was included in the rent and this portion of the tenant's claim is dismissed.

The tenant claimed for the cost of fumigating for fleas. She provided no documentary evidence to support a monetary award. There is no evidence of a written request to the landlord concerning the treatment of a flea infestation and no evidence to suggest that if there was a flea problem it was due to some fault or neglect on the part of the landlord. This claim is dismissed without leave to reapply.

Conclusion

The landlord's application has been dismissed; his application for a monetary award is dismissed with leave to reapply. I have granted the tenant a monetary award in the total amount of \$450.00 and I grant her an order under section 67 in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that court. Instead of enforcing the order, the tenant may deduct the sum of \$450.00 from the next instalment of rent due to the landlord. I have ordered the landlord to repair or replace the stove and I have granted the tenant a rent reduction for November if the electrical power is not restored.

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 20, 2014

Residential Tenancy Branch

