



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with cross applications. In the Landlord's Application for Dispute Resolution the Landlord sought an Order of Possession based on unpaid rent, a Monetary Order for unpaid rent, and to recover the filing fee for the Application. In the Tenant's Application for Dispute Resolution the Tenant sought an Order cancelling the Notice to End Tenancy for Unpaid Rent or Utilities and to recover the filing fee.

Both parties appeared at the hearing. The Landlord's son, C.Y. appeared as her agent. For the purposes of this decision, I will refer to the Landlord and C.Y. collectively as the "Landlord". The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?
2. Is the Tenant entitled to an Order cancelling the Notice to End Tenancy for Unpaid Rent or Utilities?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement.

The tenancy began September 1, 2013 for one half of a duplex including five bedrooms, three bathrooms, and one kitchen. Monthly rent was payable in the amount of \$1,800.00. Pursuant

to page 7 of the Agreement, the Tenant was to pay 75% of the utilities, including gas and electricity and the Landlord was to pay 25%. The home is heated by forced air powered by a gas furnace as well as electricity. Six people were identified as occupying the rental premises including the Tenants and their four children (two of which resided in the home half time).

The Landlord submitted in evidence the following:

- An email from C.Y. to the Tenants, dated May 2, 2014 regarding the outstanding utility charges and in which C.Y. confirms he has obtained all the original invoices and requests payment of \$523.49. He also confirms that he has removed any late payment charges (the "May Email").
- An email from C.Y. to the Tenants, dated June 16, 2014, in which C.Y. sets out in detail the amounts owing for the Tenants' share of the utilities as well as providing copies of the invoices. In this email, C.Y. confirms that \$1,500.00 was paid leaving a balance of \$697.49. Also in this email the Landlord requests payment within 10 days (the "June Email").
- Fortis BC invoices for the following dates:
 - September 25, 2013;
 - October 24, 2013;
 - November 23, 2013;
 - December 25, 2013
 - January 25, 2014;
 - February 25, 2014;
 - March 26, 2014;
 - April 24, 2014;
 - May 24, 2014;
 - June 24, 2014;
 - July 25, 2014;
 - August 23, 2014; and
 - September 25, 2014;
- BC Hydro invoices for August 12, 2014;
- A disconnection Notice from BC Hydro noting the sum of \$92.45 owing.
- A letter dated October 9, 2014 from the owner of a door installation company to the Landlord. In this letter the writer notes that he attended the rental home in 2012 at the Landlord's request and after the Landlord added extra insulation to the entire home. The writer confirms that the ceiling has at least 12 inches of batten insulation which is "more than enough in this climate". He also wrote that the walls were adequately insulated and

the Landlord “has done all that she needs to ensure good and proper attention to this issue”.

- A document titled “Electric Billing History (Actually Billing Data – By Current Occupancy)” setting out billings from January 8, 2013 to July 9, 2014.
- A document titled “[*address of rental unit*] Utilities (BC Hydro & Fortis Gas)” noting the sum of \$2,197.49 owing for the Tenants’ 75% share, a payment of \$1,500.00 leaving a balance of \$697.49 as of June 2014;
- A handwritten letter from the Landlord to the Tenants dated October 10, 2014 wherein the Landlord gives the Tenants notice to end the Tenancy by December 31, 2014.
- A 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 2, 2014 wherein the Landlord indicates the amount of \$740.99 owing for utilities and that a written demand was made August 5, 2014 (the “10 Day Notice”).
- A Proof of Service Notice to End Tenancy indicating the 10 Day Notice was served on September 2, 2014 at 9:39 p.m. by attaching to the rental unit door.

According to the documentary evidence, and C.Y.’s testimony, the Landlord has communicated the amounts owing for the Tenants’ share of the utilities since at least May 2014.

The Tenants submitted that they asked for the utility bills repeatedly and were only provided with three months of Fortis bills and have never received any for BC Hydro. The Tenants also testified that the Landlord was withholding their mail. In response, and while C.Y. did not believe this to be the case, he rented the Tenants a mailbox at another location.

The Tenants testified that a previous arbitration occurred on August 29, 2014 at which time the Tenants claimed they had not received the Landlord’s hearing package and the matter was dismissed. At this hearing, the Tenants claimed that they received the May Email, but did not receive the June Email or the 10 Day Notice. They also claimed they did not receive the Landlord’s hearing package again.

In response, C.Y. denied the Tenants’ claims of not receiving this information. He testified that after the last arbitration, he provided further copies of receipts. He also testified that for this hearing, he left the Landlord’s Application package, including the Notice of Dispute Resolution Hearing, at the Tenants’ door on September 29, 2014. Further, he claimed that he sent two packages by registered mail, one to the new mailbox and one to the residence. Both tracking numbers and receipts were provided in evidence.

At the very least the Tenants concede they received the May Email. When the Tenants were asked why they did not pay the utility amounts after receiving the May Email, the Tenants

responded that the Landlord had insufficiently insulated the home, that the fireplace cause heat loss and that there was a "hole in the kitchen". I find, by pointing to these possible heating issues, that the Tenants are not disputing whether they were made aware of the amounts charged; rather they take issue with the overall amounts and their belief that the amounts are excessive and a direct result of the inadequate insulation in the home.

When asked whether they believe any amount is owed for their share of the utilities, the Tenants responded that they should only be expected to pay the sum of \$174.00 per month and that accordingly there should be no outstanding amounts.

C.Y. confirmed that the amount outstanding for the Tenants' share of the utilities as of the date of the arbitration is \$1,137.66. The Landlord seeks a Monetary Order in this amount. C.Y. testified that all the BC hydro invoices were provided to the Tenant; notably, only the August 12, 2014 invoice was in the hearing package. C.Y. testified that he provided a large ringed binder to the branch and that the binder was taken apart for filing purposes. He confirmed some pages are now missing. C.Y. also testified that the Tenants did not pay the September and October amounts.

The Tenants deny receiving the missing pages relating to the invoices, and claimed that they in fact paid the September and October amounts.

The Tenants sought an Order cancelling the Notice, yet confirmed they intend to vacate the rental unit by December 31, 2014.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The tenancy agreement requires the Tenants to pay 75% of the utility charges to the Landlord. I further find that the Tenants failed to pay the utilities as requested and that the utility charges remain unpaid for more than 30 days. The Landlord issued the 10 Day Notice in response to the Tenants' failure to pay claiming the sum of \$740.99.

Based on the testimony of C.Y. and the Proof of Service filed, I find that the Tenants were served with the Notice on September 2, 2014 at 9:39 p.m. by attaching to the rental unit door. Section 90 of the Act provides that documents served in this manner are deemed served three days later. Accordingly, I find that the Tenants were served with the Notice as of September 5, 2014.

The Notice informed the Tenant that the Notice would be cancelled if the \$740.99 in unpaid utilities were paid within five days of service, namely, September 10, 2014. The Notice also

explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

I find that the Tenants were provided with detailed accounts of the amounts owing for utilities in May of 2014. I accept C.Y.'s testimony and further find that in June of 2014, the invoices for those utilities were also provided to the Tenants. I accept C.Y.'s testimony that he provided further copies of the invoices to the Tenants following the first arbitration.

The Tenants failed to pay the outstanding amounts and continued to only pay the amount prescribed by the equal payment plan. I find that the Tenants failure to pay their share of the outstanding utilities is based on their belief that the home is insufficiently insulated and the heating costs are excessive. I find that the Landlord has taken appropriate measures to insulate the home and to address the Tenants' concerns.

The parties agreed that the Tenants paid \$1,500.00 in utilities from September 1, 2013 to June 2014 for a total of 9 months; as such, the Tenants paid \$166.67 per month for that time period. The actual amount for the utilities during that time period was \$2,197.47, or \$244.17 per month. As six people reside in the rental unit the actual amounts for the utility charges are not excessive.

I find that the sum of \$740.99 is outstanding for the Tenants' share of the utilities from September 2013 to July 2014.

As some invoices were not included in the application package, and there is insufficient evidence to determine whether the Tenants paid anything for September and October 2014, I decline to make an Order with respect to the August, September, October and November utility amounts. The Landlord is at liberty to apply for a further Monetary Order for this time period.

Section 46(6) of the Act provides as follows:

- (6) If
 - (a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and
 - (b) the utility charges are unpaid for more than 30 days after the tenant is given a written demand for payment of them,

The landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

Under section 26 of the Act, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenant has some authority under the Act to not pay rent. In this situation the Tenant had no authority under the Act to not pay the utilities. The Tenants Application to set aside the 10 Day Notice is dismissed.

I find that the Landlord is entitled to an Order of Possession effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord has established a total monetary claim of \$790.99 comprised of the Tenants' share of the outstanding utilities for the months September 2013 to July 2014 in the amount of \$740.99 and the \$50.00 fee paid by the Landlord for this application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant failed to pay their 75% share of the outstanding utilities for the months September 2013 to July 2014.

The Landlord is granted an Order of Possession and is granted a Monetary Order for the Tenants' share of the unpaid utilities and the fee paid for filing the application. The Tenants' application to set aside the 10 Day Notice is dismissed.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 14, 2014

Residential Tenancy Branch

