Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, MNDC, CNR, ERP, OPT, RR, FF

Introduction
This hearing was set to deal with two related applications. One is the landlord's application for an order of possession and a monetary order. The other is the tenant's application for orders setting aside a notice to end tenancy; compelling the landlord to make emergency repairs; granting an order of possession to the tenant; and allowing the tenant to reduce the rent for repairs, services or facilities agreed upon but no provided. Both parties appeared and had an opportunity to be heard.

At the beginning of the hearing on February 11, 2015, the parties agreed that the tenancy would end on February 28, 2015, and an order of possession effective on that date was granted to the landlord in an Interim Decision dated February 11, 2015. This agreement resolved the landlord's application for an order of possession and the tenant's application for an order of possession and a repair order. The hearing proceeded on the monetary issues between the parties only.

The parties did not finish their testimony on February 11 and it was continued on March 3, 2015.

As described in the Interim Decision there was dispute as to whether the tenants had served the landlord with one package of evidence, which included several photographs. Before the hearing concluded on February 11 the tenants undertook to re-serve that evidence package on the landlord. This agreement was set out in the Interim Decision.

When asked at the beginning of the continuation of the hearing on March 3 whether they had re-served that evidence package the tenants said they had not. They said they spoke to the landlord who told them she already had the photographs – a statement the landlord denied – and then they questioned why they should have to serve the landlord with photographs of her own property.

The onus is on any party seeking to have evidence considered by an arbitrator to prove that all parties to the hearing received a copy of the evidence. Often this is accomplished by the other party acknowledging in the hearing that they have received the evidence. However, if the other party does not acknowledge receipt proof of service may be established by the sworn testimony of the person who served the evidence package which includes the date, place and manner of service; the testimony of third party who witnessed the delivery of the evidence; the signed

acknowledgement of receipt given by the other party when the evidence is provided to them; or a registered mail receipt.

When the issue of service first arose in this hearing the tenants could only say they gave the landlord the evidence as she came out of the pump house but they could not say when. I told the tenants that any difficulties could be simply avoided if they would re-serve their documents and they agreed to do so. The tenants did not comply with their undertaking nor are they able to prove when service of their evidence was effected on the landlord. As a result of the tenants' inability to prove that they served the landlord with the photographs, even when given a second chance to do so, they will not be considered as part of the evidence.

Between the two hearing dates the tenants filed a second set of photographs. They acknowledged that those had not been provided to the landlord and that they had been filed by mistake. Those photographs are also excluded from the evidence.

Issue(s) to be Decided

Is either party entitled to a monetary order and, if so, in what amount?

Background and Evidence

The rental unit is located on a five acre rural property. There are two living units on the property. The landlord lives in one unit and rents the other out. The two units share the same well.

In March 2014 the tenants were moving to this area from northern British Columbia. They saw the landlord's ad which said, in part: "The bedrooms are electric heat and the living room and kitchen are heated by a wood stove. . . Propane stove (propane included in rent). No smart meter (the extra fee charged by hydro for not having one paid by me). . . The water source is well water and there is a septic system. Real country living (need to be a bit mindful of the water use). . . The rent is $1400 + utilities
(negotiable for work around the place) . . ."
Their daughter looked at the property and based upon her report the tenants offered to rent the unit. The negotiations were conducted over the telephone and were never reduced to a written tenancy agreement. The tenants say they told the landlord that the most they could pay was $1100.00.

The parties agreed on $1100.00 per month plus hydro. The other $300.00 a month was to be made up by the tenants' labour around the property. An hourly rate for the labour was not discussed. The tenants said that when they discussed the labour component they talked about the tenants looking after the livestock when the landlord was away.

They also agreed that the tenancy would start May 1, 2014. The tenants sent the landlord cheques for the first month's rent and the security deposit post-dated to May 1. The landlord did not notice the dates on the cheques and deposited them. They did not clear the bank. The tenants sent the landlord another cheque for $500.00 to hold the unit until May 1.

The tenancy got off to an uneasy start.

The landlord says then when the tenants arrived they told her the move had cost more than they expected and they only had $600.00 for the May rent. They all agreed that the $500.00 security deposit would be applied to the balance of the rent.

The landlord had a truck that needed repairs. The tenant, who said he was a certified welder and mechanic, offered to do the repairs. When the work was completed he presented the landlord with an invoice for $1170.00, calculated at $50.00/hour. The landlord had expected this work would be part of the $300.00/month labour component of the rent; the tenant had expected to be paid for his professional services; so both were unhappy. The tenant agreed to reduce his bill to $630.00 and the landlord agreed to accept $470.00 cash for the balance of the June rent.

From July to December the tenants paid $1100.00/month for rent. They also did a variety of tasks around the property. The tenant fixed the landlord's lawn mower; they installed a tarp on a leaking roof; and they looked after the chickens for 5 ½ weeks when the landlord broke her leg. All of this was acknowledged by the landlord. The tenants also did yard work and some maintenance to the rental unit.

The tenants did pay a security deposit of $500.00 in July.

The water source for this property is a drilled well. Connected to the well is a 2000 gallon concrete cistern. The landlord says that although the water is drinkable she asks her tenants not to drink it. She supplies water jugs and a dispenser for drinking water. The tenants understood that they would have to pay for their drinking water and did so throughout the tenancy.

The landlord said she has had problems with the water level in the past. Whenever the water is low she has water delivered.

In July the water was tested at the tenants' request. According to the landlord they followed the decontamination procedures recommended on the company's website.

There was a forest fire near the property in September and heavy rains in October and November. The water become darker and siltier. The tenants say that after a while they were using bottled water for everything except laundry, showering and running the dishwasher. The odd thing was that although there had bee heavy rains the water level was low.

In mid-November the landlord had a water systems company inspect the situation. The company told the landlord that a hole in the concrete cistern was the reason for the low water level in the cistern.

The invoice dated November 12, 2014 says:

> "Well pump only filling cistern ½ gallon at a time. Technician found well pump was tripping due to low water in the well. Technician found the amps on ½ hp submersible pump to be 4.8. Technician replaced the central box due to a leaking capacitor. Customer is going to leave the well pump off for 4 days and let the well recover. Technician recommends that customer buy an additional load of water on November 15th and then turn well system on and monitor the well pump."

The invoice was for $219.08. The landlord asked the company for quotes for repairs and other options. They did not get back to her for some time.

The tenant suggested that the landlord purchase a plastic water cistern as a back up water supply. The landlord concurred with the suggestion and on November 24 bought a used 1250 US gallon plastic cistern.

The tenants said the plastic cistern had previously been used for fertilizer and there was mud and manure in it when it was delivered. The landlord vehemently denied the allegation. She said the vendor was recommended by the water service company; the vendor had used the cistern for drinking water only and was upgrading to larger cistern; and she had inspected it before buying it. The tenants say they cleaned the tank, laid down a wood base, and set the cistern up securely.

Later in November the landlord started calling another well drilling company asking them to assess the situation. They would make appointments but not keep them. This was a inconvenience and a source of frustration for both the landlord and the tenants.

At the end of November/beginning of December the tenant bought the necessary parts and connected the plastic cistern to the well. The tenant said he relied on the advise of the plumbing company when he purchased the parts. He was replacing galvanized steel parts and was told by the plumbing company that galvanized steel was acceptable. He used the cheaper hose option for the connection from the tank to the pump house, a choice he acknowledged turned out to be a mistake.

On December 5 the tenant advised the landlord that water could be delivered to the plastic cistern. He advised that he still needed to install heat tape and insulation and promised to do so before it got cold enough to freeze. The plastic cistern was filled on December 5, 2014.

The cost of the parts purchased by the tenant was $398.00 and this amount was deducted from the December rent.

On December 8 the second well company finally arrived at the property. He said the concrete cistern could be repaired but only in the summer. The landlord asked the well driller to connect

the plastic cistern to the well water. This was not done by the well driller until December 16. After December 16 the concrete cistern was bypassed.

The landlord and tenant gave differing reports about what the well driller thold them about the legal status of the well. The tenant said he was told that the pump did not meet code and that surface water as coming in from underneath. The tenants made some inquiries at the local health board but did not file anything in writing from the health authority about this particular well.

The landlord says she was told that although the well was not up to dodays code it was okay to leave it. She disputed the tenant's allegation that surface water is running back into the well. She said the well head sits about 6" above ground; she had the wiring replaced and the pump refurbished about four years ago.

The invoice from the well company, dated December 16 and in the amount of $419.23 says, in part:

> "Site check for information. Drilled well to cistern tank. May have to wait for dry weather in order to fix cistern tank. Pumptec on drilled well has been shutting down. May have little volume of water flow. Assess the gallons per minute on next visit.
> December 15th. Assessed volume and ran water from drilled well to plastic cistern tank. Cement cistern needs repair once ground water levels are way down. Buried cistern. . . Well required well head extension. Estimate to be sent out."

On December 16 the landlord advised the tenants of her intention to have a water filtration system installed.

The tenant did not get the heat tape installed by the end of December and on December 30 everything froze and the pipes that the tenant and the second well company installed all burst.

The tenants contacted the landlord, who was at work, that morning. The parties gave slightly different accounts of when the landlord was contacted and when she responded, but the evidence is that by that afternoon the landlord had called both well companies, neither of whom were able to come out for several days, and had arranged to have water delivered that day. According to the tenants they were without water for six hours.

Because of the ruptured pipes the pump kept pumping non-stop until the tenant shut it off that evening. When the water was delivered that evening the tenant primed the pump and everyone was back in operation.

It was not unitl January 5 that a third water systems company attended at the property. They dismantled all of the tenant's work, replaced the galvanized steel parts with stainless steel, installed a pump shut off valve and took a water sample. Their invoice was $388.25.

On January 21 the same company installed a water filtration system at a cost of $1250.00. The landlord filed a copy of the water analysis done on January 6. It shows the sample was clear of contaminants. The tenants questioned the validity of the sample. They said they took a sample for testing and were told that the water was potable (just) but not drinkable. A copy of that test result was not filed in evidence.

The other source of frustration for the tenants in the fall of 2014 was the hydro bill. There are two meters on the property, one for each living unit. Both accounts were in the landlord's name. She wanted to keep the meters in her name to avoid the installation of smart meters. The procedure followed for the first several months of the tenancy was that the landlord would present the invoice for the rental unit to the tenants and they would pay it, less the fee charged by BC Hydro for not having a smart meter. The bills averaged $70.00 per month.

Towards the end of September smart meters were installed. The hydro bill for the period October 7 to December 3 was $486.24 plus a late payment fee of $1.07 for a total of $486.24. The account for the period December 4 to January 12 was $109.42, bringing the unpaid balance to $596.73.

For the first time the tenants started challenging what was connected to their meter and refused to pay the bill. They testified that one bill was for over $400.00 and the next was over $500.00.

On January 12, 2015, the landlord closed the BC Hydro account for the rental unit and the tenants had to open a new account in their own name. The landlord has had to negotiate a payment schedule with BC Hydro for the arrears owed to January 12, 2015.

The difficulties experienced in November and December resulted in a dispute about the amount of rent to be paid for January. Ultimately the parties came to an agreement that compensated the tenants for their labour on the day the pipes froze, some parts for repairs, and a compromise on the hydro bill. The landlord accepted a cheque for $400.00. When presented to the bank, the cheque did not clear.

The tenants stopped payment of the February rent cheque.

Analysis

The agreement reached by the parties regarding the January rent is not binding because the payment that accompanied it did not clear the bank. If the payment had been made as promised, the agreement would have been binding.

The tenancy agreement was that the tenants would pay $1100.00 cash per month towards the rent. Section 26(1) of the *Residential Tenancy Act* provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulation or the tenancy agreement, unless the tenant has an order from the Residential Tenancy Branch allowing the tenant to withhold payment of all or any portion of the rent.

However, every tenancy agreement is a contract between the landlord and a tenant. As explained in *Residential Tenancy Policy Guideline 16: Claims in Damages:*

> "Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected."

Before the tenants rented this property the ad made clear that this was a rural situation and that water would not always be abundant. They also understood that they would be supplying their own drinking water. The standard to be applied to the well water was that it be potable, not drinkable. The evidence is the well water met that standard.

The tenants complained to the landlord in mid-November about the murkiness of the water. From that point on the landlord had three different water service companies to the property; she bought an additional reservoir; she had water delivered regularly at her expense; she paid twice to have the well connected to the plastic reservoir; and she had a filtration system installed.

Although the tenants expressed the view that the well was illegal; the water contaminated or at least barely potable; and the filtration system inadequate they did not provide any independent evidence to support any of these statements.

On the evidence before me I find that the landlord was not negligent in attending to the issues presented by her water system.

The evidence is also that the greatest interruption to the water supply to the rental unit was the failure of the tenant's own work.

As there was no negligence on the part of the landlord and some fault on the part of the tenants for loss of use of all or part of the premises for a period of time, no compensation for interruption to the water service will be granted.

Further, since the tenant's claim for compensation for the work he did on December 30 is really for repairs to his own handiwork, no compensation will be ordered for his efforts or his expenditures.

With regard to the hydro bill I find that the agreement was that the tenants would pay for the electrical usage recorded on their meter, less the fee the landlord was paying to avoid the smart meter. For the first several months of their tenancy the tenants did not express any concerns

about what may or may not have been connected to their meter although they had ample opportunity to inspect the system. It was only when the bills increased dramatically in the fall that they started to object to their arrangement. However, the only two factors that had changed were the installation of a new power meter and the arrival of cooler weather. Neither of these factors changes the terms of the agreement. The tenants are responsible for the unpaid hydro bill in the amount of $596.73.

The landlord also claims reimbursement from the tenants of the cost of having the water system repaired - $388.25. By having a person, who was basically an unlicensed handyman when it came to plumbing and well maintenance, perform these repairs the landlord accepted a certain standard of expertise and therefore a certain standard of risk. There is no evidence that the work done by the tenant was below the standard expected of a handyman so the landlord's claim for compensation is dismissed.

As the landlord was substantially successful on her application she is entitled to reimbursement from the tenants of the $50.00 she paid to file it. Not only were the tenants unsuccessful on their application but they did not have to pay a filing fee when they filed their application for dispute resolution.

In mid-February, between the first and second dates of this hearing a water leak was discovered inside the rental unit. A restoration company was hired by the landlord and worked for several days to address the situation. Although I heard some evidence about the situation the application for dispute resolution that was before me did not include any reference to a claim for compensation for the water leak and neither party had filed all of their evidence on that issue. Accordingly, no decision is made with regard to the water leak in February and either party may file an application for dispute resolution as may be appropriate.

Conclusion

For the reasons set out above, I find that the landlord has established a total monetary claim of $2846.73 comprised of unpaid rent for January and February in the amount of $2200.00, unpaid hydro bill in the amount of $596.73 and the $50.00 fee paid by the landlord for her application. I order that the landlord retain the deposit of $550.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of $2296.76.

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 02, 2015

Residential Tenancy Branch