



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's application: MT, CNR, PSF, FF

Landlord's application: OPR, MNR, FF

Introduction

This hearing dealt with cross applications. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and more time to file this Application; and, to order the landlord to provide services or facilities required by law. The landlord applied for an Order of Possession and Monetary Order for unpaid rent and utilities. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and procedural matters

Conduct during the hearing

At the start of the tenancy it was necessary to caution the parties, and in particular the party assisting the landlord, about appropriate conduct during the hearing such as: interrupting me or the other party, speaking out of turn, and answering the questions that were asked of them correctly and truthfully. After cautions were issued both parties affirmed to tell the truth and remained in compliance with my instructions for the most part.

Tenant's request for extension

In filing their respective applications, the parties provided different dates as to when service of the 10 Day Notice occurred. After examining the parties with respect to service of their Applications upon the other party I found the tenant's testimony likely more correct and credible given the dates the hearing packages were prepared and in comparison to the multiple different dates provided by the landlord. Therefore, I

accepted that the tenant had received the 10 Day Notice on March 23, 2015 as he had submitted in his Application.

The tenant requested that he be permitted an extension of time to dispute the 10 Day Notice for the following reasons. Since the tenant was served with the 10 Day Notice on March 23, 2015 the filing deadline fell on a weekend which permitted the tenant to file his Application on the following Monday, March 30, 2015. However, the tenant had submitted that the landlord terminated the electricity to the rental unit on March 29, 2015 which lead to the tenant obtaining the services of legal counsel on March 30, 2015 in an effort to have the electricity restored. The tenant had his lawyer draft a letter for the tenant which was then served upon the landlord.

The landlord acknowledged that he terminated the hydro supply on March 28 or 29, 2015 for three days and that the tenant served him with a letter written by a lawyer.

In light of the above, I accepted that the tenant's focus changed to restoration of electricity on March 30, 2015 due to the landlord's actions and I find exceptional circumstances prevented the tenant from filing the Application by March 30, 2015. Therefore, I granted the tenant the one day extension as he requested and I considered the 10 Day Notice to be under dispute.

Jurisdiction

Generally, disputes pertaining to employment agreement, contracts for services (such as a labour contract) and tenancy agreements are resolved in separate forums as each type of contract or agreement is subject to different laws. The *Residential Tenancy Act* and my authority to resolve disputes is limited to tenancy agreements between a landlord and tenant; whereas, employment agreements or contracts for services do not fall under the jurisdiction of the *Residential Tenancy Act*. An exception to this is in situations where a tenant has been compensated for employment or services provided to the landlord by way of an offset to rent owed to the landlord. In such cases, it may become necessary for the Arbitrator to hear submissions with respect to labour or services provided by the tenant in order to make a decision as to whether rent is owed. In this case, the parties were in agreement that during this tenancy there had been labour provided by the tenant with an offset to the rent owed and I considered submissions with respect to labour provided by the tenant in an effort to determine whether rent was owed by the tenant.

Issue(s) to be Decided

1. Did the tenant establish a basis for cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent?
2. Is the landlord entitled to an Order of Possession for unpaid rent?
3. Is the landlord entitled to a Monetary Order for unpaid rent and utilities?
4. Is it necessary to issue orders to the landlord to provide services or facilities required by law?

Background and Evidence

By way of a verbal agreement, the tenancy commenced August 1, 2014. The parties had agreed that the monthly rent for the unit would be \$500.00 payable on the 1st day of every month. It was undisputed that at no time did the tenant pay any monies toward rent or a security deposit but the tenant had provided the landlord with some construction type of labour in exchange for payment of rent. The amount of labour provided by the tenant in exchange for rent was the primary reason for this dispute.

On March 22, 2015 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) which was received by the tenant on March 23, 2015. The Notice indicates rent of \$1,750.00 was unpaid as of March 1, 2015 and a stated effective date of April 1, 2015. The tenant filed to dispute the Notice.

The landlord testified that the tenant had provided labour for him in 2014 and the tenant was not required to pay rent for the months of August – December 2014. The landlord testified that the tenant provided only a couple of hours of labour in January 2015 when the tenant worked on the floor in the rental unit and then nothing after that. The landlord explained that the amount of \$1,750.00 that appears on the 10 Day Notice was calculated as rent of \$500.00 for the months of January – March 2015 plus a \$250.00 security deposit that was never paid.

The tenant testified that he performed work for the landlord after the floor work described by the landlord and that he had worked for the landlord as recently as a couple of weeks ago. However, the tenant also testified that he has suffered medical issues with his hand that inhibit his ability to hold a hammer; he was in a serious car accident causing other significant injuries, and, that he had asked the landlord for more time to get his medical issues sorted out. The tenant also claimed that he and his wife have been managing the building for the landlord.

The landlord denied that the tenant or his wife manage the building on his behalf.

The tenant claimed that his wife has kept track of their hours worked for the landlord but acknowledged that such evidence was not given to the landlord or the Branch as evidence for this proceeding.

It was undisputed that on or about March 28 or 29, 2015 the landlord terminated the electricity to the rental unit for three days. The landlord stated that he now understands that it is illegal to do so and he indicated it will not happen again. The landlord explained that he was frustrated with the tenant's lack of payment of rent or the hydro bill which the landlord had asked the tenant to put in his name.

The tenant stated that the landlord had not presented him with any hydro bills until a large bill over \$600.00 came in late March 2015. The landlord had included that bill in the landlord's evidence package. The hydro bill is in the landlord's name and indicates that the bill covers the period of July 19, 2014 through to March 17, 2015 for the rental unit in the amount of \$634.61.

The tenant submitted that he was unaware that he was responsible for paying for hydro. The landlord submitted that rent does not include hydro and that hydro is not paid by the landlord for any of the other five units on the property.

The landlord requested an Order of Possession effective April 30, 2015 and compensation for unpaid rent for the months of January 2015 through April 2015 plus recovery of the amount owed by the tenant for hydro.

Analysis

Based upon everything presented to me, I provide the following findings and reasons with respect to the matters before me.

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. The Act provides very limited circumstances when a tenant may withhold rent. A legal right to withhold rent may be demonstrated where a landlord has specifically waived entitlement to collect rent or otherwise agrees that the tenant may withhold rent.

Where a tenant files to dispute a 10 Day Notice the tenant has a burden to demonstrate that the rent was paid or that the tenant had a legal right under the Act to withhold rent.

In this case, both parties agreed that the monthly rent for this unit is \$500.00 and that the tenant has not paid any monies to the landlord for rent since the tenancy began. Both parties provided consistent testimony that the tenant had provided some labour to the landlord and that the tenant's compensation was offset against the tenant's rent obligation. Unfortunately, neither party kept or provided detailed records to show when the tenant worked for the landlord and unsurprisingly, the parties are now in dispute as to whether the tenant "worked off" the rent for the months of January 2015 onwards.

Based upon the evidence before me, or lack thereof, I find the tenant failed to satisfy me that he compensated the landlord the equivalent of the monthly rent for January 2015 onwards by "working it off" with the landlord's agreement. I make this finding based upon the following factors:

1. The tenant acknowledged that he has suffered medical problems that make working construction difficult and that he asked the landlord for more time to sort out his medical issues.
2. The tenant did not serve the Branch or the landlord with any detailed listing or calendar to describe the type and quantity of work he performed for the landlord from January 2015 onwards.
3. The tenant did not establish that he or his wife were managing the building in exchange for rent as this was denied by the landlord and the tenant did not produce any corroborating evidence in support of this position.

In light of the above, I find the tenant did not present a basis for me to cancel the Notice served upon him and I dismiss his request for such.

Although the landlord incorrectly included the security deposit in the amount indicated on the 10 Day Notice, given the tenant had paid any rent between January and March 2015 and the tenant did not establish that he compensated the landlord anywhere near \$1,500.00 in labour in the months of January – March 2015 I find the error did not prejudice the tenant. Therefore, I find that the Notice is not invalidated by the error and I find the tenancy legally ended 10 days after the Notice was served or April 2, 2015.

Since the tenancy has ended and the tenant is still in possession of the rental unit I provide the landlord with an Order of Possession to serve upon the tenant with an effective on April 30, 2015 as requested.

With respect to the landlord's monetary claims, I provide the following findings and awards:

Rent

I find the landlord is entitled under the Act to recover unpaid rent of \$500.00 per month for the months of January 2015 through April 2015 as claimed, or \$2,000.00. However, pursuant to the authority afforded me under section 65 of the Act, I reduce the landlord's award by an amount equivalent to three days of rent in recognition of the landlord's deliberate termination of electricity for three days or \$48.39 [calculated as \$500.00 x 3/31 days].

Hydro

I accepted the landlord's argument that the tenant is obligated to pay for hydro consumed during his tenancy as more likely than not given that it is unc customary for the landlord to pay for hydro on this property for any unit and the tenant did not establish that the parties had agreed that rent included electricity. Rather, the tenant's only argument was that the landlord had not provided the tenant with any hydro bills prior to March 2015 and based upon the hydro bill presented to me it appears as though that is the only bill BC Hydro had issued since July 2014.

Upon review of the hydro bill, I find there are days for which the tenant is not responsible for paying, namely the days before the tenancy began. Therefore, I find the landlord established an entitlement to recover the following amount from the tenant for hydro:

\$634.61 amount of bill for July 19, 2014 – March 17, 2015
- 31.47 for 12 days prior to start of tenancy [\$634.61 x 12/242 days]
 \$603.41

In light of the above awards, the landlord is provided a Monetary Order calculated as follows:

Unpaid Rent: January – April 2015	\$2,000.00
Less: discount for days landlord terminated hydro	(48.39)
Hydro bill	<u>603.41</u>
Monetary Order for landlord	\$2,555.02

I have made no award for recovery of the filing fee as I find both parties contributed to this dispute by failing to keep records and violated the Act in various ways.

Finally, given the landlord's previous violation of the Act with respect to terminating electricity to the rental unit, I issue the following order to the landlord:

I order the landlord to refrain from terminating or restricting electricity or any other service or facility during the time the tenant remains in possession of the rental unit.

Conclusion

The tenant's request for cancellation of the 10 Day Notice has been dismissed.

The landlord has been provided an Order of Possession effective April 30, 2015. The landlord has been provided a Monetary Order for unpaid rent and hydro in the sum of \$2,555.02.

An order has been issued to the landlord with respect to termination of services and facilities.

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 23, 2015

Residential Tenancy Branch

