



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MNDC, MNSD, FF

Introduction

This hearing was convened as a result of a Landlords' Application for Dispute Resolution by the Landlord for an Order of Possession based on Cause, a Monetary Order for unpaid rent and money owed for utilities, an Order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

At the first date set for the hearing on February 27, 2015, I granted the Landlords' request for an Order of Possession as the Tenants did not apply to dispute the Notice to End Tenancy for Cause which was issued on January 23, 2015 (the "1 Month Notice"). I also adjourned the balance of the relief sought by the Landlords to provide the Tenants with an opportunity to submit evidence in response to the Landlords' application for a Monetary Order. This decision should be read in conjunction with my decision of February 27, 2015.

Both parties appeared at the hearing of this matter on April 7, 2015. The hearing process was explained and the participants were asked if they had any questions. B.J. spoke on behalf of the Landlords, and N.S. spoke on behalf of the Tenants, and each 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. Are the Landlords entitled to a monetary Order for unpaid rent?

2. Are the Landlords entitled to a Monetary Order for unpaid utilities?
3. Should the Landlords be entitled to retain the security deposit paid by the Tenants?
4. Should the Landlords be entitled to recover the fee paid to file their applications?

Background and Evidence

Landlords' Claim for Unpaid Rent

The Landlords testified as to the terms of the tenancy as follows: the tenancy began July 2012; monthly rent was payable in the amount of \$1,800.00 on the 25th of the preceding month; and, a security deposit in the amount of \$900.00 was paid at the time of the start of the tenancy.

The Landlords testified that the Tenants were consistently late paying rent and it was for that reason that they issued the Notice to End Tenancy for Cause.

Introduced in evidence was a ledger indicating that the Tenants were consistently late paying rent and have carried a balance since July 2012. The Landlords testified that although the Tenants have paid some funds towards the arrears of rent, normal accounting principles dictate that any payments received were applied to the oldest debt, such that at the date of the hearing, the Tenants were significantly in arrears of their rent payments.

The ledger indicated the following:

- as of June 25, 2014, the Tenants owed the sum of \$8,910.00.
- as of October 25, 2014 the Tenants owed the sum of \$8,710.00;
- as of February 2015, the Tenants owed the sum of \$8,710.00;

The Tenants vacated the rental unit on March 24, 2015. The Landlords advised that the rental unit was re-rented as of April 1, 2015.

At the first day scheduled for the hearing of this matter, February 27, 2015, the Tenants submitted that they had evidence which shows that the amount outstanding was less than that which the Landlord claimed. It was for this reason that the hearing was adjourned. Further, in their written submissions, dated, March 6, 2014, the Tenants

requested that I dismiss the Landlords' case in its entirety as they submitted that the Landlords "presented false evidence" and "falsified the store of paying rent".

Despite these bold allegations, when I asked if the Tenants had any evidence of rent paid which would dispute the amount claimed by the Landlords, the Tenants confirmed they did not. Further, when I asked if they had paid the rent in full, the Tenants confirmed they did not. The only evidence submitted by the Tenants with respect to the Landlords' claim for rent was an email from September 30, 2014 wherein the Tenants claimed the sum of \$5,400.00 was owed and the Landlord claimed the amount owing was \$6,700.00. The Tenants failed to submit any evidence which would support a finding for the \$5,400.00 sum as of September 30, 2014.

At the April 7, 2015 hearing the Tenants conceded that they owed rent, but argued that their payment of utilities for the second dwelling which existed on the rental property and which was used by the Landlords, should act to reduce the amount of rent owed to the Landlords. Further, the Tenants, in their written submissions wrote that they would "like to apply for an abatement of monthly rent due to our not being able to enjoy this property to the fullest" [reproduced as written] and requested a reduction in their rent in the amount of \$300.00 for 19 months.

The Tenants were advised that they were not able to make an application through the Landlords' Application, and that if they wished to seek monetary compensation from the Landlord they needed to make their own Application for Dispute Resolution.

Landlords' Claim for Compensation for Firewood

The Landlords sought \$200.00 for firewood used by the Tenants.

N.S. confirmed the Tenants were agreeable to reimbursing the Landlord **\$200.00** for the cost of the firewood. Accordingly, and pursuant to section 33 of the Act, I record that agreement in this my decision and resulting Order.

Landlords' Claim for Compensation for Utilities (Water and Electricity)

Electricity Bill

Although the Landlords' Application for Dispute Resolution indicated they also sought the sum of \$455.67 for an outstanding electricity account, the Landlord conceded that the Tenants may have a claim against the Landlords with respect to the electricity account as a consequence of a separate dwelling on the rental property. The Landlord

indicated that he did not wish me to make an Order with respect to the outstanding electricity account as he believed the matter could be resolved by agreement with the Tenants failing which, the Tenants' application with respect to this account should be heard at the same time as the Landlords'.

I confirmed, during the hearing, that the Landlords' request for a monetary Order with respect to the outstanding electricity charges would be dismissed with leave to reapply.

Although the Landlords did not pursue their claim for reimbursement for electricity charges, the Tenants alleged that the sum of \$4,265.58 was in fact owing to them from the Landlords for the Tenants payment of electricity which was actually used by the Landlords. Again, the Tenants were cautioned that they needed to make an application for dispute resolution should they wish to obtain monetary compensation from the Landlords for electricity charges.

Water Bill

The Landlords also sought the sum of \$206.12 for an unpaid water bill.

In response to the Landlords' request the Tenants submitted that the water bill was rendered in their name, and as such that Landlords could not claim against them for payment. Further, they submitted that a water pipe had broken which resulted in excess water charges. Finally, they argued that as the Landlords had a secondary dwelling on the property, and that building also accessed the water, that there needed to be some adjustment to the amount owing.

Again, the Tenants were cautioned that they needed to make an application for dispute resolution should they wish to obtain monetary compensation from the Landlords for water charges.

The Landlord, in their reply to the Tenants' submissions, confirmed that the water bill, while previously in the Tenants' names, was transferred to the Landlords' as property owners, such that the amount claimed was the amount owing by the Tenants.

November 18, 2014 Hearing

The Tenants submitted that the previous hearing, held on November 18, 2014, should affect the outcome of this hearing and bar the Landlord from claiming compensation for outstanding rent.

As noted in my February 27, 2015, interim decision, the Landlords' application for dispute resolution, filed October 7, 2014, was heard on November 18, 2014. At that hearing, the Arbitrator dismissed, without leave to reapply, the Landlords' application as the Landlords failed to attend the hearing, in support of their application.

The November 18, 2014 hearing concerned a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on September 30, 2014 (the "10 Day Notice"). The 10 Day Notice indicated that \$8,610.00 was owed as of September 30, 2014.

The Landlords did not provide any explanation as to why they did not attend the previous hearing nor did they apply requesting review consideration.

On the current application the Landlord requested compensation for rent owed from November 2012 to March 2015 inclusive and an Order of possession based on the 1 Month Notice. That application partially duplicated the sum of rent owed for the period of time that was decided in the November 18, 2014 decision.

The Tenants confirmed that they have paid their rent monthly from October 2014 to January 2015, but have not paid for February 2015 or March 2015. As noted above, the Landlords confirmed that while payments were made by the Tenants from October 2014 to January 2015, these payments were applied to the oldest debt first.

The Tenants raised the November 18, 2014 decision, and submitted that the Landlords no longer had a right to make a claim for the rent predating the decision, despite the fact the Tenants confirm these amounts remain unpaid.

The Landlords submit that the past decision should not bar the Landlord from obtaining an Order for unpaid rent.

The parties were informed I would be considering the principle of *res judicata* as it related to the November 18, 2014 decision and the Landlords' claim for compensation for unpaid rent.

Analysis

I have considered the landlord's claim for unpaid rent and the effect of the November 18, 2014 decision.

Res judicata, or “issue estoppel” is a rule in law which mandates that a final decision which has been made and cannot be heard again. The Supreme Court of Canada in a 2001 decision, *Danyluk v. Ainsworth Technologies Inc.* 2001 SCC 44, described this rule as follows:

18 The law rightfully seeks a finality to litigation. To advance that objective, it requires litigants to put their best foot forward to establish the truth of their allegations when first called upon to do so. A litigant, to use the vernacular, is only entitled to one bite at the cherry...An issue, once decided, should not generally be re-litigated to the benefit of the losing party and the harassment of the winner. A person should only be vexed once in the same cause. Duplicative litigation, potential inconsistent results, undue costs, and inconclusive proceedings are to be avoided.

In the same decision, the Court, referring to an earlier Supreme Court of Canada decision, *Angle v. Minister of National Revenue*, [1975] 2 S.C.R. 248, found that there are three preconditions that must be met before the principle of *res judicata* can operate:

1. The same question has been decided in an earlier proceeding;
2. The earlier decision was final; and
3. The parties to the earlier decision are the same in both the proceedings.

I note the following with respect to the application before me:

- The Landlords issued a 10 Day Notice to End Tenancy for unpaid Rent or Utilities on September 30, 2014 wherein they claimed the sum of \$8,610.00 was owed as of September 25, 2014.
- The Landlords made their application on October 7, 2014 requesting compensation for \$11,665.67 (which included unpaid rent and utilities).
- The Landlord's claim was before an arbitrator on November 18, 2014.
- The Landlords failed to attend the November 18, 2014 hearing and, in their absence, their claim was dismissed without leave to reapply.

- During the November 18, 2014 hearing, the arbitrator considered the Act and the purpose of the hearing, the fact the landlord failed to attend the hearing; knowing the landlord had a right to apply requesting review consideration and judicial review of the decision.
- The Landlords did not apply for review consideration and therefore avail themselves of the remedies available to him for a rehearing.
- In the within proceedings, the Landlords requested a Monetary Order in the amount of \$11,916.48 and submitted a ledger indicating that
 - as of October 27, 2014 the sum of \$8,115.63 was owing for rent and utilities (this figure included \$305.63 for utilities as well as the November 2014 rent); and
 - as of March 27, 2015 the sum of \$9,915.63 was owing, including \$305.63 for utilities; accordingly, as of March 27, 2015 the net amount owing for rent was \$9,610.00.

I have considered the 3 preconditions that must be met which may preclude a rehearing and find as follows:

1. The same question, that of the rent owing from November 2012 to November 2014 was decided in the November 18, 2014 decision;
2. The November 18, 2014 earlier decision was final; and
3. The parties to the November 18, 2014 earlier decision and the within proceedings are the same.

Although in the within application the Landlords request compensation for unpaid rent for subsequent months (November, December January, February and March) they rely on the same ledger and clearly were attempting to seek compensation for the unpaid rent from November 2012 to October 2014. My fellow Arbitrator decided the issue of rent owing from November 2012 to October 2014 and dismissed the Landlords claim without leave to reapply.

Based on the decision issued on November 18, 2014, and applying *res judicata*, I find that I cannot reconsider the Landlord's claim for unpaid rent owed from November 2012 to October 2014. The Landlords recourse was to apply for review consideration or

judicial review should he disagree with the November 18, 2014 decision. I am not able to rehear the matter.

However, I find that the November 18, 2014 decision did not erase a debt owed to the Landlords by the Tenants; it only resulted in the Landlords losing their right to claim a remedy for an Order requiring payment by the Tenants. The decision issued on November 18, 2014 did not relieve the Tenants of their obligation to pay rent for the time period November 2012 to October 2014; it only precluded the Landlords from making further claims for an Order for compensation for that unpaid rent. To accept otherwise would be to ignore the obligations of the Tenants when they undertake to occupy a rental unit.

In the within application, the Landlords also seek compensation for unpaid rent for the months November 2014, December 2014, January 2015, February 2015 and March 2015.

I accept the Landlords' evidence in the within application as presented in their ledger, that as of October 27 2014, the Tenants owed the sum of \$8,115.63.

The Landlords confirmed that the Tenants "miraculously" paid rent for November 2014, December 2014 and January 2015. The total of these payments is \$5,400.00. I also accept the Landlords evidence that any amounts received from Tenants was applied to the oldest debt; notably, this is the acceptable accounting practice.

As the Tenants owed the sum of \$8,115.63 as of October 27, 2014, the \$5,400.00 in subsequent payments was rightfully applied to the outstanding rent leaving a balance owing of \$2,715.63 as at the date of the November 18, 2014 hearing.

The Landlords did not attend the November 18, 2014 hearing. It appears as though there were no submissions made on the November 2014 rent and as such, I find that the November 2014 rent did not form part of the November 18, 2014 decision.

For the reasons noted above, I find that the Landlords are precluded from requesting an Order for the \$2,715.63 in unpaid rent for the time period from November 2012 to October 2014.

As the November 2014, December 2014 and January 2015 payments were applied to previous debt, the rent for those months, in addition to February 2015 and March 2015, remain outstanding for a total amount owing of \$9,000.00. It is notable that, during the hearing, I confirmed this figure with the Tenants who agreed that it was correct.

I find, pursuant to section 67 of the Act, that the Landlord is entitled to compensation in the sum of **\$9,000.00** for unpaid rent for the months November 2014, December 2014, January 2015, February 2015 and March 2015.

I dismiss with leave to reapply the Landlords claim for a Monetary Order for compensation for utilities. The Landlords conceded that the Tenants may have a valid claim with respect to electrical charges as they relate to the two dwellings on the property; I find that similar considerations may be made for the water account. Should the Tenants seek monetary compensation from the Landlords they must make their own application. It would be preferable for the Landlords' application and the Tenants' application with respect to utilities to be heard at the same time.

I find that the Landlords' application has merit and, pursuant to section 72 of the Act that the Landlords are entitled to recover the **\$50.00** filing fee from the Tenants for the cost of this Application for Dispute Resolution.

Pursuant to section 72 of the Act, I find that the landlord is entitled to retain the \$900.00 security deposit in partial satisfaction of the claim.

Based on these determinations I grant the Landlords a Monetary Order for the balance of **\$8,350.00** which includes the following:

November 2014 rent	\$1,800.00
December 2014 rent	\$1,800.00
January 2015 rent	\$1,800.00
February 2015 rent	\$1,800.00
March 2015 rent	\$1,800.00
Reimbursement for firewood	\$200.00
Filing fee	\$50.00
Total	\$9,250.00
<i>Less security deposit</i>	<i>\$900.00</i>
Total Monetary Order	\$8,350.00

The Landlords must serve the Tenants with the Monetary Order. In the event that the Tenants do not comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The claim for rent pre-dating November 2014 has been previously decided.

The Landlords are entitled to monetary compensation in the amount of \$9,000.00 for unpaid rent for November 2014, December 2014, January 2015, February 2015 and March 2015.

The Landlords are also to be compensated \$200.00 for firewood.

The Landlords are entitled to recover the filing fee costs of \$50.00.

The Landlords may retain the security deposit of \$900.00 in partial satisfaction of the claim and are granted a Monetary Order in the amount of **\$8,350.00**.

The Landlords claims for an Order pursuant to section 67 for unpaid utilities is dismissed with leave to reapply.

This decision is final and binding on the parties, unless 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: April 17, 2015

Residential Tenancy Branch

