



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

DRI, OPR, MNDC, RPP, LRE, RR, FF

Introduction

This hearing was scheduled in response to the tenant's application for dispute resolution made on April 23, 2015. The tenant applied to dispute an additional rent increase, to cancel a 10 day Notice to end tenancy for unpaid rent issued on April 22, 2015, compensation for damage or loss under the Act; an Order requesting return of the tenant's personal property and that conditions be set on the landlord right to enter the rental unit; an Order the tenant be allowed to reduce rent for repairs, services and facilities agreed upon but not provided and to recover the cost of the filing fee from the landlord.

The tenant provided affirmed testimony that he has a Canada Post tracking number as evidence of service of the hearing documents. The tenant gave affirmed testimony that copies of the Application for Dispute Resolution and Notice of Hearing and evidence were sent to the landlord on April 27, 2015. The tenant used the service address supplied on the 10 day Notice to end tenancy issued on April 22, 2015. The tenant said that the mail was successfully delivered to the landlord.

I find that these documents are deemed to have been served in accordance with section 89 and 90 of the Act; however the landlord did not appear at the hearing.

Preliminary Matters

In relation to the claim for damage or loss under the Act totaling \$2,250.00, the only calculation the tenant provided was a claim of \$75.00 per month for RV parking.

Issue(s) to be Decided

Should the 10 day Notice to end tenancy for unpaid rent issued on April 22, 2015 be cancelled?

Has the landlord issued a rent increase that fails to comply with the legislation?

Must the landlord be Ordered to return the tenant's personal property?

Must the landlord's right of entry to the rental unit be limited?

May the tenant reduce rent for repairs, services or facilities agreed to but not provided?

Background and Evidence

The tenant supplied a copy of a decision issued on October 7, 2013 (see cover of this decision for the file number.) This decision included findings that relate to the current application.

The tenancy commenced on August 1, 2008; rent in the sum of \$625.00 is due on the first day of each month. As the result of a hearing held on October 7, 2013 the arbitrator found that storage and RV parking were included with the total rent paid. Rent is paid via direct deposit to the landlord.

The tenant has a copy of the signed tenancy agreement. The tenant read from clause three of the agreement, which indicates that heat and electricity are included as services with rent.

The tenant has set out a number of issues on his application:

- A ten day Notice to end tenancy issued on April 22, 2015 for unpaid rent due in the sum of \$2,000.00 April 1, 2015. The Notice has an effective date of May 2, 2015.
- The landlord has increased the fee for storage and RV parking from \$50.00 and \$100.00 respectively, to \$90.00 and \$300.00 effective May 1, 2015. A copy of a typed notice issued by the landlord on April 22, 2015 to the tenant was supplied as evidence.
- A Notice of Rent Increase issued on April 22, 2015 based on monthly rent of \$500.00; effective August 1, 2015.
- The storage unit that is attached to the back of the tenant's rental unit is no longer useable. The locker leaks and has mold.
- On October 7, 2013 the landlord was ordered to remove a bus from the tenant's rental property and to move the tenant's 5th wheel trailer back to the property. The landlord has not complied with that Order.
- The landlord had significant hydro arrears that could not be paid so on December 12, 2014 the tenant agreed to place the hydro in his name. The tenant feared the hydro would be cut off. The tenant is now paying the arrears and monthly hydro bills.
- The landlord enters the rental site without notice.

The tenant has disputed the Notice to end tenancy within one day of the issue date.

On October 7, 2013 the landlord was Ordered to return the tenant's 5th wheel trailer to the rental unit property. The landlord has ignored the Order that was issued by the arbitrator. The tenant said that he has claimed \$75.00 per month for each month that the landlord has kept the trailer off of the property between July 2013 and June 2015. The RV is near-by the rental unit. The bus that was placed on the residential property, where the RV had been parked in July 2013, is occupied by a tenant. The tenant said that his RV was damaged by the landlord to the point that it has been rendered unusable. The tenant said the police have told him that the damage caused is a tenancy issue.

The decision issued on October 7, 2013 included the finding, as follows:

"I find that the monthly rent also includes RV parking and a storage area, all of which are on the rental property."

The tenant supplied copies of BC hydro bills that have been issued in the tenant's name for service provision since December 14, 2014. The tenant is paying the bills for his unit and another that is connected to the single hydro meter.

The tenant has borrowed money to pay the hydro arrears that were on the landlord's account. This was done to preserve the hydro service. The landlord was to reimburse the tenant for the hydro costs but has failed to do so.

The hydro bills supplied by the tenant showed:

Date of service/Payment	Owed	Paid by tenant
Prior to December 14, 2014	\$2,986.62	
December 24 2014 to February 24, 2015	1,478.68	
January 14, 2015		500.00
January 27, 2015		625.00
January 27, 2015		475.00
February 25 to March 25, 2015	484.47	
March 3, 2015		625.00

The bill issued on March 27, 2015 indicates that the tenant installation payment plan had a balance in the sum of \$1,386.62 owed. The tenant supplied a Service BC receipt in the sum of \$1,614.56 as evidence that he borrowed sufficient funds to pay the balance of hydro owed. The tenant is now expecting to pay \$425.00 per month in equal payments to BC hydro plus \$140.00 to pay the loan he incurred to cover the balance of hydro owed by the landlord leading up to December 12, 2014. This sum would total \$565.00 of current rent owed in the sum of \$625.00.

The tenant said that hydro costs are also included with rent for the second rental unit connected to the hydro service.

The tenant has requested a rent reduction to cover the cost of hydro which was to be provided as a service of the tenancy agreement.

The tenant submitted a CD of digital evidence that was given to the landlord. The CD contains short films taken of the bus that was moved onto the rental property where the tenant's RV had been parked. The movies show the rental unit exterior and shed roofing that is aged metal, with holes and obvious signs of failure. The movies included evidence showing the bus being moved on to the tenant's rental site and the extensive damage caused to the RV. The rental unit appears to be located in a farm-yard.

The tenant said he is not using the storage shed that is attached to his unit as it is moldy and the roof leaks. The tenant said the value of the shed has been reduced to zero.

The tenant said that the landlord will enter onto the residential property without any notice.

Analysis

In the absence of the landlord who was served with Notice of this hearing I find that the 10 day Notice to end tenancy for unpaid rent issued on April 22, 2015 is cancelled and of no force and effect. The landlord must attend the hearing in support of the reasons upon which the Notice was issued. In the absence of evidence that the tenant has not paid rent due, the Notice has been cancelled. The tenancy will continue until it is ended in accordance with the legislation.

The copy of the October 7, 2013 decision supplied as evidence contained a finding that rent includes RV parking and storage on the property. As an arbitrator has previously found that rent includes storage and RV parking I find, pursuant to section 62(3) of the Act, that the note given increasing the fees for these services is of no force and effect. As a result rent remains at \$625.00 per month, including storage and RV parking. A notice of rent increase must be given in the approved form and as these facilities are included with rent they fall within the legislated requirement for rent increases.

The Notice of Rent Increase issued that is to be effective August 1, 2015 is not based on the current monthly rent payable. Therefore, pursuant to section 62(3) of the Act I find that the Notice is of no force or effect. The landlord is at liberty to issue another Notice that reflects the monthly rent owed which is currently \$625.00

From the evidence before me I find that the storage area provided to the tenant as part of rent paid is not in a useable state. Section 32 of the act requires a landlord to maintain and repair. Until the landlord repairs the storage area by placing a new roof on that structure and ensuring that mold is remediated I find that the monthly rent is reduced by the value the landlord has placed on the storage; \$50.00 per month. This rent reduction will commence August 1, 2015. This provides the landlord with the month of July 2015 to make the required repairs to the storage shed.

Once the landlord makes repairs to the storage shed (new roof and mold remediation) the landlord is to provide the tenant with written notice the repair has been completed; at which point the rent abatement will cease. For example, if the repair is made by August 1, 2015 and notice given to the tenant, the rent will not be reduced in August. If the storage shed is not fixed by August 1, 2015 rent owed will be \$575.00 commencing August 1, 2015 and thereafter until written notice has been given to the tenant confirming repair has been completed as Ordered. If notice of repair completion is given during August 2015 then September rent in the sum of \$625.00 must be paid.

If the landlord and tenant do not agree repair has been completed as Ordered the landlord may submit an application for dispute resolution and bring forward evidence the repair has been made as Ordered. An arbitrator will then be at liberty to determine if the \$50.00 abatement should end and if the tenant has withheld rent that should be paid.

In relation to the RV the tenant has confirmed that it remains on the property. Therefore, I find that the claim requesting compensation for RV parking is dismissed, as the tenant is entitled to storage of the RV as part of rent that has been paid. There was no evidence before me that the tenant has suffered any loss or that the RV does not remain within close proximity to the rental unit on the landlord's property. The tenant may consider the current parking area for his RV as his approved parking area.

The tenant may present this decision to any authority he wishes, as evidence that any dispute related to damage caused to the RV is not within the jurisdiction of the Residential Tenancy Act.

Based on the tenancy agreement signed by the parties; according the testimony of the tenant, I find, pursuant to section 62(3) of the Act, that hydro costs are included with rent paid. The tenant has agreed to place the hydro in his name as the landlord owed an amount to BC hydro that would result in a service disconnection. The landlord is now reneging on the agreement by failing to pay the hydro costs that are included as a term of the tenancy agreement.

While I find it is unconscionable for the tenant to have the hydro account in his name when the service covers two rental units, the tenant has chosen to accept this responsibility so that the hydro service is not terminated. To Order the service to be placed back in the landlord's name could place the provision of service to the tenant in jeopardy.

Therefore, I find, pursuant to section 65(1)(f) of the Act that the tenant is entitled to make deductions from each month's rent for all hydro costs incurred, based on the bi-monthly bills issued by BC Hydro. The tenant is at liberty to deduct the debt that was on the account for service prior to December 14, 2014.

The tenant is to keep a full accounting, commencing December 12, 2014, of each bill, the dates of service each bill covers, each payment made and the date payments are

made to BC hydro and any balance owed. The tenant is to provide the landlord with a copy of each hydro bill and an up-to-date ledger of payments made and balance owed including the arrears that were on the account. These documents may be sent via regular mail to the landlord's service address included on the application for dispute resolution; the same address provided on the Notice of Rent Increase issued on April 22, 2015. The landlord is aware, by receipt of this decision that these documents should arrive on a bi-monthly basis.

From the evidence before me it appears that the monthly hydro costs, combined with the arrears the tenant is paying on behalf of the landlord, may exceed the sum of rent owed. If that occurs the tenant is entitled to submit an application for dispute resolution to claim the difference between hydro costs and the rent owed.

From the evidence before me it appears that the rental unit is on a rural property and situated in an area where there are a number of out-buildings. The landlord may not enter the immediate vicinity of the tenant's unit; such as the storage unit or into the tenant's unit unless he has given proper notice of entry in accordance with section 29 of the Act. A copy of this section of the Act is appended after the conclusion of this decision.

The tenant is at liberty to terminate his monthly electronic transfers for rent and to make rent payments by another method as long as the tenant is able to confirm the payment was made no later than the first day of each month.

As the tenant's application has merit I find the tenant is entitled to recover the \$50.00 filing fee from the next month's rent owed.

Conclusion

The 10 day Notice to end tenancy for unpaid rent issued on April 22, 2015 is of no force and effect.

Rent is currently \$625.00 per month due on the first day of each month and includes storage and RV parking.

The Notice of Rent Increase issued on April 22, 2015 is of no force or effect.

The claim for compensation related to RV parking is dismissed.

The current location of the RV may be considered as the approved parking space.

The tenant may pay the BC hydro bills and arrears incurred by the landlord and deduct those payments from rent owed. The tenant is at liberty to submit a claim for any hydro costs that exceed monthly rent owed.

The landlord is Ordered to repair the storage shed and if it is not repaired as Ordered the tenant is entitled to rent abatement in the sum of \$50.00 per month commencing August 1, 2015.

The landlord must issue notice of entry as set out in section 29 of the Act.

The tenant may deduct the \$50.00 filing fee from the next month's rent due.

This decision is final and binding 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: June 09, 2015

Residential Tenancy Branch

Landlord's right to enter rental unit restricted

- 29** (1) *A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*
- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;*
 - (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:*
 - (i) the purpose for entering, which must be reasonable;*
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;*
 - (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;*
 - (d) the landlord has an order of the director authorizing the entry;*
 - (e) the tenant has abandoned the rental unit;*
 - (f) an emergency exists and the entry is necessary to protect life or property.*
- (2) *A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).*

