



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, OPL, OPC, MNR, MNSD, MND, O, MT, DRI, CNR, LRE, FF

Introduction

This was a cross-application hearing.

On July 6, 2015 the tenant applied requesting more time to apply to cancel a 10 day Notice ending tenancy for unpaid rent issued received in July 4, 2015, to dispute an additional rent increase, to set or suspend the right of the landlord to enter the rental unit and to recover the filing fee costs.

On July 16, 2015 the landlord applied requesting an Order of possession based on unpaid rent, landlord's use of the property and for cause. The landlord requested compensation for unpaid rent and utilities, to retain the security deposit and compensation for damage to the rental unit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

Preliminary Matters

The parties confirmed receipt of each other's' hearing documents and evidence with the exception of seven pages of evidence submitted by the landlord to the Residential Tenancy Branch (RTB) on August 18, 2015. That evidence was left in the tenants' mail box on August 30, 2015. The tenant said he did not receive the evidence.

RTB Rules of Procedure set the requirements for service of documents.

3.1 Documents that must be served

The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

a) the application for dispute resolution

b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;

c) the dispute resolution proceeding information package provided by the Residential Tenancy Branch;

d) a detailed calculation of any monetary claim being made;

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e) a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and

f) any other evidence, including evidence submitted to the Residential Tenancy Branch with the application for dispute resolution, in accordance with Rule 2.5 [Documents that must be submitted with an application for dispute resolution].

Rule 2.5 of the Rules of Procedure require an applicant to submit, to the extent possible, copies of all documentary and digital evidence to be relied on at the hearing. Several exceptions do not apply in this case.

The landlords' August 30, 2015 evidence submission failed to meet the requirement of Rule 3.15, as it would be deemed served on the third day after being placed in the mail box; which was only one day before the hearing. Therefore, that evidence was set aside and the landlord was at liberty to make oral submissions.

A copy of two 10 day Notices to end tenancy for unpaid rent were supplied as evidence; one issued on July 4, 2015 and the second issued on August 7, 2015. The landlord did not supply copies of a two month Notice to end tenancy for landlord's use of the property or a one month Notice to end tenancy for cause and did not have copies of the Notices before her. The landlord supplied copies of proof of service documents for Notice each of these Notices.

The landlord submitted a request for compensation totalling \$4,573.21 as the total monetary claim. The details of the dispute section of the application set out a claim totalling \$2,549.21 for rent and utilities, flooring (\$1,250.00), front door (\$350.00), two locks (\$224.00) and pet damage (\$200.00). I explained that a claim for damage to the rental unit was premature. Therefore, pursuant to RTB Rules of Procedure, section 2.3, and the portion of the landlord's application requesting compensation for damage to the rental unit has been severed and the landlord has leave to reapply.

The parties confirmed that a security deposit has not been paid; there is no claim against a deposit.

The tenant applied to cancel the 10 day Notice ending tenancy on July 4, 2015 within the required time frame. As the landlord has issued a second 10 day Notice for unpaid rent for August 2015 I have also considered that Notice as in dispute and as part of the tenants' application related to incorrect rent increases and possible rent overpayment.

The tenant indicated several matters of dispute on his application. As the main issue to be dealt with was the payment of rent, utilities and the possible end of the tenancy the balance of the tenants' application has been severed as unrelated, pursuant to section 2.3 of the Rules of Procedure. The tenant has leave to reapply.

The tenant submitted a memory stick to the RTB as evidence. The landlord confirmed receipt of a min-disc which she said she was unable to view. Rule 11.8 requires a party to ensure, at least 5 full days prior to a hearing, that the other party has received the digital evidence, has access to equipment and that they have been able to view the digital evidence. The tenant did not confirm the landlord's ability to view the evidence.

From the detailed description of the digital evidence it appears the focus of that evidence was related to the damages claim made by the landlord. As the landlord was unable to view the digital evidence given by the tenant, I determined that the evidence must be set aside.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent and utilities in the sum of \$2,549.21?

Is the landlord entitled to a monetary Order for unpaid rent and utilities?

Has the landlord imposed a rent increase that fails to comply with the legislation and, if so, is the tenant entitled to return of any overpayment made?

Background and Evidence

Partial copies of three different tenancy agreements were supplied as evidence. The parties agreed that the tenancy commenced on May 1, 2008, that rent was \$675.00 per month due on the first day of each month. The tenant was responsible for payment of hydro.

The tenant confirmed receipt of two 10 day Notices ending tenancy for unpaid rent issued on July 4, 2015 and August 7, 2015. The Notices were each received on the issue dates.

The Notice issued on July 4, 2015 indicated the tenant owed \$250.00 rent for June and July 2015 (\$125.00 for each month), plus \$548.88 in utility costs. This Notice did not include an address for the property to be vacated.

The Notice issued on August 7, 2015 indicated the tenant owed \$800.00 rent and \$2,549.21 in utility costs. This Notice was not signed by the landlord.

The Notices indicated that they would be automatically cancelled if the landlord received the sums included on the Notices within five days after the tenant was assumed to have received the Notices. The Notices also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The landlord provided copies of three Notice of Rent Increase forms issued to the tenant. The first Notice was issued on November 2009 for a \$50.00 rent increase to \$700.00 effective March 1, 2010. The Notice does not include a current sum of rent owed and includes a hand-written note "as per verbal agreement at the time of moving in."

On September 1, 2013 a Notice of Rent Increase was issued showing current rent as \$675.00 with an increase of \$125.00, to \$800.00 per month effective January 1, 2014.

On May 1, 2015 the landlord issued a Notice of Rent Increase which showed current rent as \$800.00, no increase was imposed. The Notice included a hand-written note:

"tenant ignored rent increase notice of Sept 1/13 and Nov 20/09."

(Reproduced as written)

The landlord maintained the hydro account in her name until the tenant placed the account in his name effective April 14, 2015.

The landlord and tenant each supplied copies of receipts issued for rent payments made throughout the tenancy. Receipts for each month were not submitted. The landlords' written submission indicated unpaid 2012 utilities in the sum of \$77.17; a copy of the bill was not supplied as evidence.

The landlord submitted hand-written lists of sums paid by the tenant for rent and utilities. Copies of complete utility bills were supplied as evidence by the landlord:

- January 24, 2014 to March 31, 2014;
- May 24 to September 23, 2014; and
- November 25, 2014 to March 31, 2015.

These bills totalled \$1,098.86, including several small credits applied.

The tenant agreed with the hand-written records supplied by the landlord, setting out rent payments he has made and the utility payments made by the landlord since 2013. The hand-written notes submitted by the landlord as evidence set out the following sums the landlord has claimed is owed by the tenant:

Date Paid - 2013	Utilities paid by landlord
February 14	\$171.34
April 16	102.89
June 17	93.52
August 15	94.94
October 16	89.94
December 17	111.05
TOTAL	\$663.68

In 2013 the tenant paid rent in the sum of \$610.00 per month, totalling \$7,320.

Hand-written records set out the payments made in 2014 as follows:

Date Paid – 2014	Utilities paid by landlord
February	186.25
April	168.08
June	108.95
August	113.25
October	129.81
December	153.54
TOTAL	\$859.88

Rent paid - 2014	
January – June \$610.00/month	\$3,660.00
July – November \$800.00/month	4,000.00
December	650.00
TOTAL	\$8,310.00

The tenant said he thought he had paid \$675.00 in December 2014. The landlord pointed to a receipt in the evidence that was for this payment; the receipt did not copy well and was illegible. The tenant agreed he may have paid \$650.00.

The parties agreed the following payments have been made by the tenant in 2015:

2015 – Payments by tenant	
January	\$980.00
February	800.00
February 26	1,000.00
March 31	800.00

May 1	800.00
May 30	675.00
July 3	675.00
TOTAL	\$5,730.00

In February 2015 the landlord made a utility payment in the sum of \$253.18.

The tenant said he received only Notices ending tenancy for unpaid rent and has not seen the Notice for cause and landlord's use of the property. Therefore, the tenant did not dispute those Notices.

The parties discussed access to the rental unit and the landlords' allegation the tenant has changed the locks to the front door. The tenant told the landlord he would give her the opportunity to copy any of his keys. The landlord was told that she may have any repair made to the lock if the keys do not work. A copy of section 29 of the Act has been appended after the conclusion of this decision, for the reference of the parties.

Analysis

In order to establish the amount of rent owed I have considered the Notices of Rent Increase that have been issued by the landlord. Part 3 of the Act sets out the process for imposing a rent increase and the allowable amount of any rent increase. Section 41 of the Act prohibits any increase that does not comply with this part of the Act.

Section 43 of the Act provides:

Amount of rent increase

43 (1) *A landlord may impose a rent increase only up to the amount*

(a) calculated in accordance with the regulations,

(b) ordered by the director on an application under subsection (3), or

(c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

Section 22 of the Residential Tenancy Regulation sets the allowable annual rent increases at no more than the inflation rate, which is determined by government. In 2010 the allowable rent increase was 3.2% and in 2014 the allowable increase was 2.2%.

I have considered the November 20, 2009 rent increase issued. If rent was increased by \$50.00 to \$700.00 I am assuming the increase was based on rent of \$650.00. The allowable increase effective in March 1, 2010 would have been \$20.80. The rent increase imposed exceeded the allowable sum. Therefore, I find that the increase failed to comply with the Act and Regulation and that rent remained at the amount indicated on the tenancy agreement, \$675.00 per month. The parties had agreed that rent was originally \$675.00, as shown on the tenancy agreement.

I find that the Notice of Rent Increase issued on September 1, 2013 failed to comply with the Act and Regulation as the increase allowed effective January 1, 2014 was for a maximum of \$14.85, not \$125.00, as recorded on the Notice.

The Notice of Rent Increase issued on May 1, 2015 indicated rent was \$800.00 and was to remain at \$800.00. The rent had not been increased to \$800.00 in accordance with the Act and Regulation; therefore I find the May 1, 2015 Notice is not enforceable.

Therefore, in the absence of a Notice of Rent Increase that complies with the legislation I find, pursuant to section 62(3) of the Act that the rent has remained at \$675.00 per month throughout the tenancy.

I have considered the form and content of the two 10 day Notices to end tenancy for unpaid rent.

Section 52 of the Act provides:

Form and content of a notice to end tenancy

52 *In order to be effective, a notice to end a tenancy must be in writing and must*

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*
- (e) when given by a landlord, be in the approved form.*

I find that the Notice ending tenancy issued on July 4, 2015 is of no force and effect and is cancelled as the landlord did not indicate the address of the rental unit to be vacated on the Notice as required by section 52(b) of the Act.

I find that the Notice ending tenancy issued on August 7, 2015 is of no force and effect and is cancelled as the landlord failed to sign the Notice as required by section 52(a) of the Act.

Section 3.1 of the RTB Rules of Procedure requires a party to supply copies of a Notice to end tenancy if an Order of possession is requested. The landlord failed to submit copies of the Notice ending tenancy for landlord's use of the property and for cause and did not have copies before her for reference. Therefore, in the absence of copies of these Notices I find that request for an Order of possession based on the Notices to end tenancy for cause and landlords' use of the property is dismissed.

In relation to rent and utilities I find that the tenant is responsible for utility costs; this was not in dispute.

Based on rent owed in the sum of \$675.00 per month I find that the annual rent payable is \$8,100.00.

Based on the evidence before me I find that the following rent and utility payments were made:

Year	Rent paid	Balance rent owed	Utilities paid by landlord
2013	\$7,320.00	\$780.00	663.68
2014	8,310.00	0	859.88
2015 (Jan.-July)	5,730.00	0	253.18
TOTAL		\$780.00	\$1,776.74

I have applied section 67 of the Act in relation to the monetary claims made by the parties.

I find that in 2013 the tenant owed \$8,100.00 rent and that he failed to pay \$780.00 rent owed during that year.

I find that in 2014 the tenant owed \$8,100.00 rent and that he overpaid rent by the sum of \$210.00.

I find that the tenant owed \$4,725.00 rent from January to July 2015 inclusive and that the tenant overpaid rent during this period of time in the sum of \$1,005.00.

I find that the tenant owed \$1,776.74 in utility costs from January 2013 to March 2015 inclusive and that the rent overpayment is applied to utility costs owed.

Therefore, from the evidence before me I find that the landlord is entitled to compensation in the sum of \$1,314.74 in rent and utilities from January 2013 to July 2015, inclusive (\$780.00 - \$210.00 – \$1,005.00 + \$1,776.74.)

As the tenant did not agree to any costs prior to 2013 and no copy of the 2012 hydro bill was supplied I find the claim for that sum is dismissed.

The balance of the landlords' claim is dismissed.

Based on these determinations I grant the landlord a monetary Order in the sum of \$1,314.74. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

As each application had some merit I have set off the filing fee costs against the other.

Conclusion

The landlord is entitled to a monetary Order for unpaid utilities and rent.

The tenants' rent overpayment is applied to the sum owed to the landlord.

Filing fee costs are set off against the other.

The Notices ending tenancy are cancelled. The tenancy will continue until it is ended in accordance with the Act.

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: September 10, 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).

