



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT COMMISSION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent and for damage to the unit pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing by conference call and gave affirmed testimony. The landlord's agent (the landlord) stated that the tenant was served with the notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail on June 17, 2015. The landlord has submitted a copy of an online search of the Canada Post Tracking website which shows that the tenant signed in receipt of the package on June 22, 2015. The tenant confirmed receipt of both the notice of hearing package and the submitted documentary evidence. The tenant also stated that no documentary evidence was submitted by her. I find based upon the landlord's undisputed evidence that the tenant was properly served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act. The tenant is deemed to have been served 5 days later as per section 90 of the Act.

At the conclusion of the hearing, the tenant stated that she was in the process of moving and provided a new mailing address for delivery of the decision. The new address will be updated on the application and in the Residential Tenancy Branch database.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage to the rental unit and recovery of the filing fee?

Background and Evidence

This tenancy began on April 1, 2010 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated March 30, 2010. The monthly rent was \$121.00. No security deposit was paid. A condition inspection report for the move-in was completed on March 30, 2010. An incomplete condition inspection report for the move-out on October 28, 2013 was made by the landlord without the tenant. Both parties confirmed that a water pipe burst ending the tenancy on January 16, 2014.

The landlord stated that a water pipe burst due to the tenant cancelling both gas and electric service to the rental property. The landlord stated that because of this the burst water pipe caused a flood damaging the rental property requiring extensive restoration.

The landlord seeks a monetary claim of \$18,079.05 which consists of:

\$121.00	Unpaid Rent January 2014
\$76.24	Unpaid Hydro (October 28, 2013 to January 22, 2014)
\$411.56	Unpaid Gas (October 28, 2013 to January 27, 2014)
\$46.31	Site Rep. Call Out Charge (Flood Response)
\$84.00	Charge for water vacuuming
\$495.86	Repair Furnace from water leaks (50% of invoice)
\$2,221.95	Replace Furnace and Hot water Tank due to water leak (50% of invoice)
\$14,622.13	Restoration of Rental Unit due to Water Flood

The landlord stated that the tenant had given notice to vacate the rental unit on several occasions, but after each one requested an extension on the end of tenancy. Both parties confirmed in their direct testimony that the tenant had left the rental unit moving to Alberta, but that the tenant would maintain the rental unit as a storage unit until the tenant was able to move all of her belongings. The landlord stated that agents of the landlord attended the rental unit on October 28, 2013 as a result of a neighbor notifying them of a strange smell from the tenant's rental unit. The Landlord's agent entered the rental unit in the company of a RCMP Officer to inspect the property. The tenant was notified of the entry by the RCMP. At that time, the landlord's agent noted on a condition inspection report dated October 28, 2013, a general inspection of the following:

Nobody Home;
No hydro on;
No gas on;
Had RCMP go into unit first;
Was very bad smell coming from unit;
Pictures to follow.

The tenant stated that she left the rental property on September 25, 2013. The tenant stated that she received a telephone call from the RCMP on October 28, 2013 informing her that the Police and her landlord had entered her rental unit due to a strange smell. The tenant claims that the landlord had previously entered her rental unit without her permission. The landlord disputed this claim stating that no one had entered the rental unit until October 28, 2013 when the landlord's agent attended with the police.

The landlord stated that the landlord's agent had contacted both utilities and had both services changed to the landlord's control. The landlord gave direct testimony stating that both utilities were turned back on to a minimum setting.

The tenant stated at that time a colder than average weather front had entered into the area.

The landlord relies upon the submitted copies of:

A letter dated June 10, 2013 confirming the tenant's rent contributions for the period April 1, 2013 to March 31, 2014 for \$121.00.

A letter dated November 4, 2013 confirming the tenant's notice to vacate the rental premises on November 30, 2013.

A letter dated October 15, 2014 regarding the tenant's move-out debt.

A statement of tenant debt charges dated October 15, 2014, totalling, \$18,079.05.

A copy of electrical utility charges dated December 31, 2013 with a total of \$38.44.

A copy of electrical utility charges dated February 28, 2014 with a total of \$66.11(calculated for 35 days for a total of \$37.80).

A copy of gas charges dated December 12, 2013 with a total of \$167.57.

A copy of gas charges dated February 6, 2014 with a total of \$243.99.

A copy of an invoice for labour in responding to a flood at the rental premises dated January 29, 2014 for \$46.31.

A copy of an invoice for vacuuming the flood water dated February 1, 2014 for \$84.00.

A copy of a plumbing invoice dated January 20, 2014 for \$991.73.

A copy of an invoice from a restoration company for \$14, 622.13.

A copy of the completed condition inspection report for the move-in dated March 30, 2013.

A copy of the completed condition inspection report for the move-out dated October 28, 2013.

A copy of a letter from the landlord dated October 23, 2013 advising the tenant that the Gas and Electrical utility companies have notified the landlord that their services to the rental property have been "locked off".

68 color photographs of the rental unit on October 28, 2013.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Section 7 (2) of the Act states, a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find based upon the evidence of both parties that the landlord has failed to establish a claim for damages. The landlord provided a copy of a letter dated October 23, 2013 which advised the tenant that they were aware that the gas and electrical utilities had been "locked off". The landlord's letter stated,

We consider this to be a breach of a material term of your tenancy agreement with (the landlord). Lack of Services to the unit has the potential to cause significant damage. Damages caused by gas and hydro disconnection will be charged back to the tenant...

Despite this warning and the landlords' awareness of these circumstances, the landlord chose not to seek an end to this tenancy on the basis of a breach of a material term of the tenancy agreement. Rather, the landlord's agents attended the rental property on October 28, 2013 and took control of both the gas and electrical utilities. The landlord gave undisputed affirmed testimony that the landlord's agent set the thermostat once the utilities were turned on to a "minimum setting". On this basis, I find that the landlord assumed the liability of the gas and electrical services as they were aware the tenant was not in residence and was using the rental unit primarily as storage. The landlord's agent should have been aware of the local temperatures and made the necessary adjustments to mitigate any possible damage as the landlord was in control of the utilities. The landlord's monetary claim for damages is dismissed.

The landlord's claim for unpaid rent of \$121.00 for January 2014 has not been established. The tenant did not dispute that January 2014 rent of \$121.00 was not paid. Although the tenant failed to pay the \$121.00 in rent, the end of tenancy was caused when the extensive damage was discovered on January 16, 2014, and after the landlord failed to take adequate action to minimize the tenant's exposure to the landlord's eventual losses. On this basis, I find that the landlord is only entitled to a pro-rated amount for the 16 days of January prior to when the flood was discovered. I find that the landlord is entitled to \$62.45 for the pro-rated amount for unpaid rent.

On the landlord's claim for unpaid utilities, I find that the landlord has established a claim for the \$76.24 in electrical and \$411.56 for gas charges based upon the submitted invoices. Although the landlord was in control of the utilities, the tenant was still in possession of the rental unit (for storage purposes) and would have been responsible

for utilities to maintain the rental unit. The landlord is entitled to \$487.80 for unpaid utilities.

The landlord having been only partially successful in the application is entitled to recovery of \$50.00 of the filing fee.

The landlord has established a total monetary claim of \$600.25, which consists of:

\$62.45	Pro-rated Unpaid January Rent
\$487.50	Unpaid Utilities (Hydro and Gas)
\$50.00	Filing Fee

Conclusion

I issue a monetary order in the landlord's favor for \$600.25.

The landlord is provided with this Order and the tenant must be served with this Order. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: December 1, 2015

Residential Tenancy Branch

