



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, RP, FF

Introduction

This hearing dealt with an application by the tenants for orders setting aside a 10 Day Notice to End Tenancy for Non-Payment of Rent dated September 15, 2015 and compelling the landlord to make certain repairs. At the beginning of the hearing the tenants agreed that the most important issue was whether the tenancy would continue or not. Accordingly, I dismissed their application for a repair order with leave to re-apply pursuant to Rules 2.3 and 6.2.

The landlord had filed an application for an order of possession and a monetary order. The hearing of that application was set for January 6, 2016 at 1/30 pm. The landlord asked that both applications be heard and decided today. The tenants agreed to that request.

Both parties confirmed that they had received the other side's written evidence for both applications. Both parties gave affirmed testimony.

Issue(s) to be Decided

- Is the 10 Day Notice to End Tenancy for Non-Payment of Rent dated September 15, 2015 valid?
- Is the landlord entitled to a monetary order and, if so, in what amount?

Background and Evidence

This tenancy commenced September 1, 2014 as a one year fixed term tenancy and has continued thereafter as a month-to-month tenancy. The monthly rent of \$1100.00 is due on the first day of the month. The tenants paid a security deposit of \$550.00. They did not pay a pet damage deposit.

In addition to the rent the tenants were responsible for all utilities. There are two rental units in this building. The tenancy agreement provided that the tenants were to put the hydro bill and the water bills in their names and to collect 40% of the bills from the other tenant.

There were some delays in the process of transferring the accounts from the landlord to the tenants.

The BC Hydro invoice for the period September 1, 2014 to November 4, 2014 and the past due notice for that invoice were sent to the landlord. On January 2, 2015 she sent the tenants an e-mail reminding them that it was their responsibility to have the hydro account transferred to their names. The tenant responded that he was having financial difficulties but would take care of this as soon as possible.

The invoices for the periods November 5, 2014 to January 6, 2015, and January 6, 2015 to March 5, 2015, were also sent to the landlord as the account was still in the landlord's name. By this time the arrears, including late fees, were \$1498.90.

There was no documentation as to when the BC Hydro account was actually transferred into the tenant's name. It appears that the tenants were required to pay a security deposit to BC Hydro as the tenants filed a copy of a disconnection notice dated May 26, 2015, for the unpaid deposit.

The tenants also filed a copy of a disconnection notice dated June 8, 2015 for arrears of \$1900.10.

The tenants were able to negotiate a payment plan with BC Hydro. The payment schedule provided for monthly payments of \$317.00 for six months in addition to payment of current charges.

On June 10, 2015, the tenants advised the landlord of the results of their negotiation with BC Hydro. She reminded them that the other tenant was to contribute to the bill.

There was conflict between the tenants and their neighbour about his contribution to the utility bills. He did pay the tenants \$500.00 towards the hydro account.

At the end of August the landlord was made aware of the problem. She met with the tenants on several occasions and subsequent to those meetings she collected \$430.72 from the other tenant, which she paid directly to hydro. She also advised the tenants that in the future a copy of the hydro bill should be sent to her so she could collect payment from the other tenant of his 40% share.

The tenants paid the deposit. They also made the first two payments to hydro, a total of \$634.00. After that, they did not comply with the payment schedule. They testified that they made a payment of \$400.00 on November 8, 2015.

According to the spread sheet prepared by the landlord and reviewed by the tenants their portion of the hydro bill for the period September 1, 2014 to September 3, 2015 totalled \$1395.63. The tenants have paid a total of \$1034.00, leaving a balance of \$361.63. Although it is not possible, on the documentation filed by the parties, to determine the date on which the BC Hydro account was transferred to the tenant it is possible to conclude, based upon the outstanding balance, that all the charges made to the landlord's account have been paid.

The other tenant's share for the hydro for the same period was \$930.72. This amount has been paid by that tenant, either to the tenants or to the landlord as described above.

The parties went through a similar process with the water bill except that the landlord and the tenants went to the regional office together. The outstanding water bill was \$300.89. The landlord collected \$120.36 in two separate installments from the other tenant and paid it directly to the regional authority.

In the hearing the tenants expressed concern about the application of the \$609.00 payment. It was explained to them that the security deposit was collected by BC Hydro because they are new customers. This payment is separate from the account for services received and therefore has nothing to do with the landlord or the other tenant.

The tenants acknowledged receipt of the 10 Day Notice to End Tenancy for Unpaid Rent dated September 15, 2015, which claimed arrears of rent in the amount of \$600.00. The parties testified that the tenants paid \$500.00 towards the arrears of September rent and that \$100.00 remained outstanding. The tenants testified that they did not pay any rent for October or November.

Analysis

The *Residential Tenancy Act* does not prohibit landlords from requiring tenants to put shared utility accounts into their name. The law is that if the other tenants do not pay their share, the tenant whose name is on the account may claim against the landlord for the other tenant's share of the unpaid utility bill.

In this case, as soon as the tenants let the landlord know they had a problem with their neighbour she took action; not only did she meet with everyone to mediate an

agreement she collected full payment from the other tenant and advised the tenants that she would take care of collection from him in the future.

The manner in which the landlord handled this situation was in full compliance with the law.

The tenants did not have a legal right to withhold any rent and did not pay the full amount of the outstanding arrears with the five day period. Accordingly, I find that the 10 Day Notice to End Tenancy for Non-Payment of Rent dated September 15, 2015 is valid and the landlord is entitled to an order of possession effective two days after service on the tenant.

I find that the landlord has established a total monetary claim of \$2350.00 comprised of arrears of rent for September, October and November in the amount of \$2300.00 and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the deposit of \$550.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1800.00.

As the tenants were not successful on their application no order for reimbursement of the filing fee they paid for it will be made.

Conclusion

- a. An order of possession effective two days after service on the tenant has been granted. If necessary, this order may be filed in the Supreme Court and enforced as an order of that Court.
- b. A monetary order in favour of the landlord in the amount of \$1800.00 has been granted. If necessary, it may be filed in the Provincial Court (Small Claims) 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 02, 2015

Residential Tenancy Branch

