



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, MNDC, PSF, LRE

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities; for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to provide services or facilities required by law; and for an Order restricting or setting conditions on the Landlord's right to enter the rental unit.

This Application for Dispute Resolution was the subject of a dispute resolution hearing on July 24, 2015. The Residential Tenancy Branch Arbitrator conducting the hearing on July 24, 2015 adjourned that hearing and rendered an interim decision, dated July 29, 2015.

The Residential Tenancy Branch Arbitrator who conducted the hearing on July 24, 2015 is presently on extended leave for personal reasons and it is unknown when she will be returning to work. The parties were given the choice of starting an entirely new hearing or permitting me to rely on the interim decision of July 29, 2015 and proceeding with the original hearing from that point. The Landlord stated that she wishes to have an entirely new hearing and I respect that decision.

Preliminary Matter #1

The Tenant stated that the Application for Dispute Resolution, the Notice of Hearing, and the documents he submitted to the Residential Tenancy Branch with the Application were sent to the Landlord, via registered mail, sometime in June of 2015. The documents submitted were explained to the Landlord at the hearing. The Landlord acknowledged receiving all of these documents with the exception of the Tenant's three-page typed submission.

The aforementioned documents the Landlord acknowledged receiving were accepted as evidence for these proceedings. As the Landlord did not acknowledge receiving the

Tenant's three-page typed submission and the Tenant may speak to the relevant issues in that document, I find there is no need to accept the physical document as evidence.

On July 08, 2015 the Tenant submitted six pages of evidence to the Residential Tenancy Branch and on July 13, 2015 he submitted a CD. The Tenant stated that this evidence was mailed to the Landlord sometime in July of 2015, although he cannot recall the exact date and he cannot find the Canada Post receipt. The documents submitted were explained to the Landlord at the hearing. The Landlord stated that she did not receive the CD but she did receive the other documents.

As the Landlord does not acknowledge receipt of the CD and the Tenant did not submit proof that it had been served, I did not accept the CD as evidence for these proceedings. The documents the Landlord acknowledged receiving were accepted as evidence for these proceedings.

On July 30, 2015 the Landlord submitted ten pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via registered mail, although she cannot recall the date of service and she cannot find the Canada Post receipt. The Tenant stated that he did not receive this evidence. As the Tenant does not acknowledge receiving this evidence and the Landlord did not submit proof that it had been served, I did not accept it as evidence for these proceedings.

On September 17, 2015 the Landlord submitted 31 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via registered mail, although she cannot recall the date of service and she cannot find the Canada Post receipt. The Tenant stated that he did receive this evidence, with the exception of the invoice regarding the gas meters, dated September 01, 2015. The evidence the Tenant acknowledged receiving was accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter #2

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. The Tenant stated that his claim for a monetary Order relates to harassment that has occurred during this tenancy, which has caused him significant stress.

I find that not all of the issues identified the Tenant's Application for Dispute Resolution are sufficiently related to be determined at these proceedings. I therefore sever the Tenant's application for a monetary Order and will only consider the issues which I believe are urgent, which include:

- whether the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities should be set aside;
- whether there is a need to issue an Order requiring the Landlord to provide services or facilities required by law;
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The application for a monetary Order is dismissed, with leave to re-apply.

Issue(s) to be Decided

Should the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities be set aside?

Is there a need to issue an Order requiring the Landlord to provide services or facilities required by law?

Is there a need to issue an Order restricting or setting conditions on the Landlord's right to enter the rental unit?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on May 01, 2014;
- the rent is \$782.00 per month;
- there are two suites on the lower portion of the residential complex, one of which is the Tenant's rental unit;
- there is one suite on the upper portion of the residential complex;
- on June 02, 2015 the Landlord served the Tenant with a One Month Notice to End Tenancy for Unpaid Rent and Utilities;
- the Notice to End Tenancy declared the tenancy was being ended because the Tenant owed \$138.26 for utilities;
- the tenancy was the subject of a different dispute resolution proceeding on March 05, 2015.

With the consent of both parties I viewed the decision from the proceeding on March 05, 2015, which is referenced on the first page of this decision. The relevant findings in the March 05, 2015 decision are:

- the Tenant is responsible for paying utility costs;
- before the tenant is required to pay the utility costs the Landlord must obtain a report from an authorized BC Hydro authority or electrician licenced to work in British Columbia, declaring that the electrical panel that runs to the Tenant's unit and generates the bill for that unit provides power to the Tenant's unit alone and does not provide power to other areas of the home;
- before the Tenant is required to pay the utility costs the Landlord must provide the Tenant with a copy of the report obtained declaring the details of the hydro service to the tenant's unit;
- before the Tenant is required to pay the utility costs the Landlord must obtain a report issued by Fortis gas or a gasfitter licenced to work in British Columbia

setting out the gas connection details, confirming gas service billed to the tenant's unit is for gas provided to that unit alone;

- before the Tenant is required to pay the utility costs the Landlord must provide the Tenant with a copy of the report obtained declaring the details of the gas service to the Tenant's unit; and
- if either of the utility services is found to be providing service to other parts of the residential complex, outside of the tenant's unit, the term requiring payment for that utility is unenforceable.

The Landlord submitted a copy of a document from BC Hydro, dated March 17, 2015, which declares there are two hydro meters at the residential complex, one at unit B and one that is not specifically linked to either of the other two suites in the complex.

The Landlord submitted an email, dated June 10, 2015, in which an electrician declares that he went to the rental unit to inspect the meters but he was unable to access the rental unit.

The Landlord submitted a copy of a document from a plumbing company, dated June 10, 2015, in which the plumber declares one of the gas meters at the residential complex serves unit B and the other gas meter serves unit A and C.

The Landlord and the Tenant agree that the plumber who inspected the gas meters testified at the hearing on March 05, 2015, at which time he testified that:

- his conclusions were based on information provided to him by the Landlord regarding the hot water tanks;
- he was unable to access units B and C during his inspection; and
- until he is able to access units B and C he will be unable to conclude if the meter for unit B also serves unit C.

The Landlord and the Tenant both agreed that they would accept the testimony of the plumber as outlined in the interim decision of March 05, 2015 and that there is no need to call this witness again.

The Landlord submitted an invoice, dated September 01, 2015, which declares "confirmed that the gas meters are separating the upstairs from downstairs" and "gas meters are separate for both units". Although the Tenant does not acknowledge receiving this invoice, he does not dispute the content of the invoice. The information on the invoice was read out at the hearing and the Tenant stated that he does not need to physically view that document.

The Tenant stated that he is fairly certain that his gas meter measures gas consumption in unit C because when hydro was turned off in the residential complex and the second gas meter was shut off, the occupant of unit C, which has a gas powered hot water tank, still had access to hot water. He argued that the invoice of September 01, 2015

supports his position, as it declares that one gas meter is for the downstairs and unit B and C are both downstairs.

The Tenant and the Tenant agree that electrical service to the rental unit was terminated on May 19, 2015 and that there was no service to the rental unit at the time of the hearing on March 05, 2015. The Tenant stated that he believes service was terminated as a result of information provide to BC Hydro by the Landlord. The Landlord stated that she believes service was terminated because the bills were not being paid.

The Landlord and the Tenant agree that at the hearing on March 05, 2015 the Arbitrator ordered the Landlord to restore power to the rental unit. The parties agree that after the hearing on March 05, 2015 the Landlord restored hydro service to the rental unit, although there is still no electrical service in the bedroom and the heater in the bathroom does not have electricity.

The Tenant is seeking an Order suspending or setting conditions on the Landlord's right to enter the rental unit. The Tenant stated that he does not believe the Landlord has entered his rental unit without lawful authority but he is concerned that the Landlord sometimes alleges that she has given notice of her intent to enter via text messages, which he does not receive. The Tenant is seeking clarification on how notice to enter must be given.

The Tenant stated that he is concerned about the number of notices to enter he is receiving from the Landlord, as he alleges he has received three notices in one month.

The Tenant stated that he would also like the Landlord to cancel her notices to enter if she subsequently determines that she will not be entering the rental unit. The Landlord stated that she will cancel notices, by telephone, if she does not intend to enter the unit after notice has been given.

Analysis

I find that I am bound by the decisions made by the Arbitrator on March 05, 2015, pursuant to section 77(3) of the *Act*. Specifically, I find that I am bound by the decision that:

- the Tenant is responsible for paying utility costs;
- before the tenant is required to pay the utility costs the Landlord must obtain a report from an authorized BC Hydro authority or electrician licenced to work in British Columbia, declaring that the electrical panel that runs to the Tenant's unit and generates the bill for that unit provides power to the Tenant's unit alone and does not provide power to other areas of the home;
- before the Tenant is required to pay the utility costs the Landlord must provide the Tenant with a copy of the report obtained declaring the details of the hydro service to the tenant's unit; before the Tenant is required to pay the utility costs

the Landlord must obtain a report issued by Fortis gas or a gasfitter licenced to work in British Columbia setting out the gas connection details, confirming gas service billed to the tenant's unit is for gas provided to that unit alone;

- before the Tenant is required to pay the utility costs the Landlord must provide the Tenant with a copy of the report obtained declaring the details of the gas service to the Tenant's unit; and
- if either of the utility services is found to be providing service to other parts of the residential complex, outside of the tenant's unit, the term requiring payment for that utility is unenforceable.

I find that the document from BC Hydro, dated March 17, 2015, does not clarify whether the hydro meter associated with unit B measures hydro usage in other areas, such as common areas or another suite, of the residential complex.

I find that the email, dated June 10, 2015, from an electrician who declared that he went to the rental unit to inspect the meters but he was unable to access the rental unit is of limited value. In the event the Landlord was having difficulty accessing the rental unit for the purposes of having an electrician inspect the electrical system, she merely needed to provide proper notice of her intent to enter, pursuant to section 29 of the *Act*, and then enter at the appropriate time to complete the inspection.

The Landlord has not submitted a report from an electrician that clearly establishes the electrical panel that runs to the Tenant's unit and generates the bill for that unit provides power to the Tenant's unit alone and does not provide power to other areas of the home. I therefore find that the Tenant is not yet obligated to pay for any portion of the hydro bill for the residential complex.

I find that the Tenant will not be obligated to pay any portion of the hydro bill until the Landlord obtains a written report from a qualified electrician that specifically declares that the hydro meter for unit B only measures electricity consumption in unit B and not in any other areas of the residential complex. Once the Landlord has a written report that provides the specific information required, the Landlord may file an Application for Dispute Resolution seeking an Order requiring the Tenant to pay for hydro costs.

On the basis of the testimony of the plumber who wrote the invoice dated June 10, 2015, in which he declares that one of the gas meters at the residential complex serves unit B and the other gas meter serves unit A and C, I find that the Landlord has not established that the Tenant's gas meter only measures gas consumption in the Tenant's unit. In reaching this conclusion I was heavily influenced by the plumber's testimony that until he is able to access units B and C he will be unable to conclude if the meter for unit B also serves unit C.

I find that the invoice, dated September 01, 2015, which declares that the technician "confirmed that the gas meters are separating the upstairs from downstairs" and "gas

meters are separate for both units”, does not clarify whether the gas meter associated with unit B measures gas usage in unit C. In reaching this conclusion I was heavily influenced by the undisputed evidence that units B and C are both “downstairs”.

I find that the Tenant will not be obligated to pay any portion of the gas bill until the Landlord obtains a written report from a qualified technician that specifically declares that the gas meter for unit B only measures gas consumption in unit B and not in any other areas of the residential complex. Once the Landlord has a written report that provides the specific information required, the Landlord may file an Application for Dispute Resolution seeking an Order requiring the Tenant to pay for gas costs.

On the basis of the undisputed evidence, I find that the Landlord has failed to establish that the Tenant owed any money for utilities when the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was served on June 02, 2015. As the Landlord has not yet established that the Tenant must pay for the cost of utilities, I find that the Landlord does not yet have the right to end this tenancy for unpaid utilities. The Tenant's application to set aside the Ten Day Notice to End Tenancy is granted.

I find that electrical service is an essential service and that until such time the Landlord has established that she is not required to pay for that service as part of the tenancy agreement, she is obligated to provide electricity in accordance with section 27(1) of the *Act*.

The Landlord is hereby ordered to immediately ensure there is electrical service to all areas of the rental unit, including the bedroom and the heater in the bathroom. In the event the electrical service to the bedroom and heater are not restored by December 31, 2015, the Tenant is hereby authorized to reduce the rent by \$50.00 per month, commencing January 01, 2016, and continuing on the first day of each month until the service is restored.

The Landlord and the Tenant are reminded that they are both obligated to comply with section 29(1) of the *Act*, which reads:

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.

The Landlord is directed to provide written notice of her intent to enter in a manner that complies with section 88 of the *Act*, which does not permit her to provide written notice via text message. For the benefit of both parties, section 88 of the *Act* reads:

All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

Section 29(2) specifies that the Landlord may enter the rental unit for an inspection once per month, with proper notice. The Landlord is, therefore, limited to entering the unit for the purposes of completing a “general” inspection to one time per month.

Section 29(1)(b) stipulates that’s a landlord may only give notice to enter a rental unit for a “reasonable” purpose. I therefore Order the Landlord to only give notice to enter the rental unit for a reasonable purpose, which would include a repair, an inspection for the purposes of determining hydro/gas service, or in response to an emergency. The *Act* does not require landlords to cancel a notice to enter a rental unit if the landlord subsequently decides not to enter the unit; however the Landlord is strongly encouraged to extend this courtesy to the Tenant. Repeatedly informing a tenant of a planned entry and not following through with that notice could, in some circumstances, give rise to a claim for loss of quiet enjoyment.

Conclusion

The Ten Day Notice to End Tenancy for Unpaid Rent or Utilities is set aside. This tenancy shall continue until it is ended in accordance with the *Act*.

The Landlord is required to comply with the Orders set out in the analysis portion of this decision.

The Tenant is not obligated to pay for gas or hydro until the Landlord has filed an Application for Dispute Resolution and an Arbitrator has determined that payment is due.

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 08, 2015

Residential Tenancy Branch

