



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's application: CNR, MNDC

Landlord's application: OPR, MNR, MNSD, FF

Introduction

This hearing dealt with cross applications. The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and monetary compensation for damage or loss under the Act, regulations or tenancy agreement. The landlord applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party. The male tenant appearing at the hearing confirmed that his co-tenant was aware of the proceeding but that he was representing both of them as she was unwell.

Preliminary and Procedural Matters

When the hearing first commenced I had only the tenant's application before me. The landlord's agent submitted that a landlord's application had also been filed. A search of the Branch records showed that the tenants' application and the landlord's application were scheduled for the same time on the same date to deal with the same Notice to End Tenancy but with two different Arbitrators. Since I had both parties before me I joined the applications and heard them at the same time. Although I did not have the hard copy of the landlord's application and evidence before me, I was able to view it electronically during the hearing.

The landlord confirmed receipt of the tenants' application. The tenants' application was amended, with consent, to exclude the landlord's agent as a named party to this dispute.

The tenant confirmed that he received the landlord's evidence package submitted in response to the tenants' application.

With respect to the landlord's application the tenant stated that he could not recall service upon him. The landlord's agent retrieved his log book and noted that he attended the rental unit twice to serve hearing documents upon the tenants: November 12, 2015 he attended the rental unit to serve the landlord's application and on December 1, 2015 he attended the rental unit to serve the landlord's evidence. The landlord's agent testified that on both occasions he personally gave the male tenant two copies of the documentation with one copy to be given to the female tenant who was inside the rental unit. The tenant conceded that the agent's submissions were likely accurate but that he just did not have the documents before him. I reviewed the landlord's application with the tenant orally to ensure the tenant was aware of the remedies the landlord was seeking.

Section 89 of the Act provides for ways an Application for Dispute Resolution must be served upon the other party. Since the landlord's application was only given to the male tenant and the female tenant was not present at the hearing I must consider whether service upon the female tenant was sufficient. Section 89(2) provides that an application for an Order of Possession may be served upon the tenant or an adult person that apparently resides with the tenant. Accordingly, I find that serving the male tenant with two copies of the landlord's application is sufficient for purposes of obtaining an Order of Possession against both co-tenants. However, a monetary claim must be served upon each tenant either personally or by registered mail pursuant to section 89(1). Since the landlord's monetary claim was not served upon the female tenant in person or by registered mail I find that giving the both copies of the landlord's application to the male tenant is insufficient to provide the landlord with a Monetary Order against the female tenant. Therefore, the monetary order issued in this case only names the male tenant and it remains up to the co-tenants to apportion any liability among themselves.

In filing the landlord's application in November 2015 the landlord had only requested compensation with respect to unpaid rent for November 2015. Since filing, another month has passed for which rent has not been paid and the tenants remain in possession of the rental unit. Accordingly, the landlord requested that his award include unpaid or loss of rent for December 2015 as well. I found this request non-prejudicial as the tenants have continued to benefit from use and occupancy of the rental unit in December 2015 and I permitted the amendment.

Issue(s) to be Decided

1. Should the 10 Day Notice to End Tenancy for Unpaid Rent be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession?
3. Is the landlord entitled to recover unpaid and/or loss of rent from the tenant?
4. Have the tenants established an entitlement to recover the amounts claimed against the landlord?

Background and Evidence

The tenants began residing in the rental unit in November 2013 and a paid a security deposit of \$425.00. Shortly thereafter the tenants and the landlord's agent executed a written tenancy agreement dated November 30, 2013. The written tenancy agreement provides that the tenants are required to pay rent of \$850.00 on the last day of the previous month.

In June 2014 the landlord's agent signed a document entitled "amendment to tenancy agreement with [names of tenants]" that reflected the following:

[Name of landlord] agrees to make the following amendment to the Tenancy Agreement signed November 30, 2013.

A hydro subsidy amount for \$100 a month for the months of October, November, December, February and March paid in the form of \$100 reduction of rent due for each qualifying month."

Despite the "amendment" not mentioning the month of January I heard undisputed testimony from both parties that the rent reduction was in effect for the winter months of October through March, including January. The tenants deducted \$100.00 from the rent for the months October 2014 through March 2015 and again starting October 2015.

The parties offered different reasons for the rent reduction. The tenant stated the reduction was to reflect that the rental unit was not sufficiently insulated which resulted in very high hydro bills and that the landlord had misrepresented to them that he had insulated the rental unit. The landlord stated that he agreed to the rent reduction as he recognized the tenants did not have a lot of money and he wanted to keep the rental unit occupied as opposed to losing the tenants.

It was undisputed that the tenants did not pay any rent for the month of November 2015. The landlord's agent personally served a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) to the male tenant on November 2, 2015. The Notice indicates the tenants failed to pay rent of \$850.00 as of November 1, 2015 and has a stated effective date of November 12, 2015. The landlord explained that the Notice indicates rent of \$850.00 owed for November 2015 since the tenants were no longer in good standing by withholding rent which nullified the rent reduction agreement.

After receiving the Notice the tenants did not pay any portion of the outstanding rent but filed to dispute the Notice within the time limit for doing so. In filing their dispute, the tenants indicated "for two years the water well is powered by electric which is on our utilities [account]."

It was also undisputed that the tenants have not paid any rent for December 2015 and continue to occupy the rental unit.

The landlord seeks to regain possession of the rental unit and be compensated for the unpaid and/or loss of rent for the months of November and December 2015.

A tenant's obligation to pay rent under the Act was reviewed with the tenant during the hearing. The tenant acknowledged that he mistakenly believed he had the right to withhold rent because he had not had a satisfactory resolution to a dispute regarding his hydro bills. When asked if the tenant was willing to pay the outstanding rent to continue the tenancy the tenant responded by saying he would rather move out than pay rent to the landlord.

The tenants seek monetary compensation of \$2,250.00 from the landlord with respect to hydro they have paid to power the well pump. The tenant explained that \$2,250.00 is calculated as three months at \$750.00. Below, I have summarized the parties' respective positions concerning the tenant's monetary claims.

The rental unit is a manufactured home and that there is also a house on the same property. The manufactured home and the house have separate electric meters; however, both units are provided water from the same well. The well pump is powered by electricity connected to the tenants' hydro account. Both parties recognized that when the house is occupied the pump works more to provide the occupants of the house with water which results in increased electricity costs for the tenants. Both parties provided consistent testimony that the landlord has compensated the tenants \$100.00 for two months that the house was occupied in 2014 by way of \$100.00 rent abatement given in May 2015.

The landlord submitted that the house was occupied for approximately 2.5 months during this tenancy. The landlord was speaking very fast and it was very hard to follow his testimony with respect to how many times the house was occupied. In contrast, the tenant clearly submitted that the house was occupied for approximately 6 months and described three different tenants occupying the house during his tenancy.

The tenant described how more recently, in September 2015, the well pump required servicing and the tenant determined that the pump was an older model that consumed more electricity than he originally thought. He approached the landlord's agent about obtaining another rent reduction to reflect this and his belief that the pond on the property had been filled with water from the well. The agent brought the tenant's concerns to the landlord; however, the landlord was not agreeable to another rent reduction in addition to the ones he had already agreed to. The tenant was not satisfied with the landlord's response and, in turn, withheld rent for November 2015 to get the landlord's attention.

The tenant was of the position that they should be compensated \$2,250 in recognition of the pump supplying water to the house, the gardens, the orchard, and the pond. The tenant conceded that it is very difficult to know with certainty how much water was supplied to other parts of the property or the cost of doing so.

The landlord responded by stating the house was occupied for very few months and that the garden and orchard were not watered.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons with respect to each party's application.

Unpaid Rent

Under section 26 of the Act a tenant is required to pay rent in accordance with their tenancy agreement even if the landlord has violated the Act, regulations or tenancy agreement; unless, the tenant has a legal right under the Act to withhold rent. The Act provides for very limited and specific circumstances when a tenant may legally withhold rent. A tenant may legally withhold rent if the tenant first obtains the landlord's consent or authorization from an Arbitrator. From the "amendment" signed by the landlord's agent in June 2014 I find the tenants did obtain the landlord's consent to withhold \$100.00 of the monthly rent for each winter month of October through March. I also

accept the undisputed submissions of the parties that the tenants also obtained the landlord's consent to withhold \$100.00 in rent for May 2015. However, the tenants did not obtain the landlord's consent to withhold \$750.00 that was due for November 2015 and the tenants did have the authorization of an Arbitrator to do so. Nor, did the tenants present any other legal basis under the Act that would exempt the tenants from their obligation to pay rent of \$750.00 for November 2015. Accordingly, I find the landlord was within his right under the Act to serve the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent for November 2015.

I reject the landlord's position that \$850.00 is outstanding for November 2015 as the "amendment" is not conditional on the tenants being in good standing. Based on the wording of the amendment I find the rent reduction comes into effect depending upon the month and since the subject month is November 2015 I find the rent reduction of \$100.00 remains applicable.

Although I find the amount indicated on the Notice to be incorrect I do not invalidate it because the tenants did not make any attempt to pay the lesser amount of \$750.00 and even when given the opportunity during the hearing the tenant stated that he would not be paying the rent even at the lesser amount of \$750.00. Therefore, I find and order that this tenancy is at an end due to unpaid rent.

Having found this tenancy at an end, I provide the landlord with an Order of Possession as requested to be effective two days after service upon the tenants.

I also find the landlord entitled to recover unpaid rent of \$750.00 for the month of November 2015 and since the tenants have remained in possession of the rental unit in December 2015 I further award the landlord loss of rent of \$750.00 for the month of December 2015.

As the landlord was successful in his application I further award the landlord recovery of the filing fee he paid, or \$50.00. I authorize the landlord to retain the tenants' security deposit in partial satisfaction of the unpaid rent.

Tenants' claim for compensation re: water pump hydro

Both parties recognized that the tenants incur higher hydro bills when water is being pumped to the house on the property and that it is unfair for the tenants to pay those costs. The parties were in dispute as to how many months the house was occupied. I found the tenant's testimony with respect to that point much clearer and reliable than the landlord's testimony. Therefore, I accept that the house was occupied closer to six

months than two and I find the tenants should be compensated for those additional four months.

The difficulty in the tenants' claim is that they did not provide copies of their hydro bills or some other documentation from BC Hydro that would show their actual hydro costs. Since they are seeking compensation for increased hydro costs I find that evidence would be crucial to establishing a claim. However, I was provided undisputed submissions that the landlord had previously compensated the tenants \$50.00 for each of the two months the house was occupied; thus, I find \$50.00 per month to be a fair approximation as to the increased hydro costs to the tenants when the house was occupied. As I have accepted that the house was occupied for closer to six months, I find the tenants entitled to further compensation of \$50.00 for four months or \$200.00.

With respect to the tenant's assertion that water pump was older and larger than he originally thought and assertions that water was also pumped to the garden, orchard and pond, I find the tenants did not sufficient particulars as to electrical consumption of different types of pumps; the capacity of the pond; or how frequently the garden or orchard was watered. Given this lack of information along with an absence of the hydro bills or other documentation from BC Hydro, I find the tenants did not meet their burden to prove an entitlement to compensation greater than what I have awarded above.

Monetary Order

Since I have granted both parties a monetary award, pursuant to section 72 of the Act, I offset the awards and provide the landlord with a Monetary Order in the net amount calculated as follows:

Rent: November 2015 and December 2015	\$1,500.00
Filing fee	50.00
Less: security deposit	(425.00)
Less: award to tenants for well pump hydro	<u>(200.00)</u>
Monetary Order for landlord	\$ 925.00

To enforce the Monetary Order it must be served upon the tenant and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The tenancy has ended for unpaid rent and the landlord is provided an Order of Possession effective two (2) days after service upon the tenants.

The landlord has been authorized to retain the tenants' security deposit in partial satisfaction of unpaid rent. Since both parties have been provided a monetary award with this decision, after offsetting, the landlord has been provided a Monetary Order in the net amount of \$925.00 to serve upon the male tenant and enforce as necessary.

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 11, 2015

Residential Tenancy Branch

