



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC OPC MNDC FF

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for an Order of Possession for Cause pursuant to section 55 and a monetary order for unpaid utilities pursuant to section 67.

This tenant applied for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("the 1 Month Notice") pursuant to section 47; a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions, and dispute resolution packages for this hearing.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid utilities for this tenancy?

Is the tenant entitled to a monetary award for damage or loss as a result of this tenancy?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

Both parties testified that this tenancy began on August 1, 2013 and that the current rental amount is \$1500.00 is payable on the first of each month. Landlord BD testified

that he continued to hold the \$750.00 security deposit paid by the tenant at the outset of this tenancy.

As a result of a previous Residential Tenancy Branch (“RTB”) hearing on October 05, 2015, the parties reached an agreement as follows;

- The landlord agrees to terminate his billing for Fortis and BC Hydro effective October 31, 2015;
- **The tenant agrees to commence her billing with Fortis and BC Hydro effective October 31, 2015;**
- The parties agree that the tenant is responsible for paying 60 % of both the Fortis and BC Hydro bills;
- The landlord agrees that he will pay the other 40% on behalf of the downstairs tenant;
- The tenant agrees that she will provide the landlord with scanned copies of the Fortis and BC Hydro bills immediately upon her receipt thereof;
- The parties agree that any further communication between them that relates to the amount in question today namely, \$151.99, will be done by registered mail;
- The landlord agrees that the most recent Fortis and BC Hydro bills will be sent by email to the tenant by no later than 5:00 p.m. today;
- The parties agree that the \$50.00 cost of this application will be split between them.

[emphasis added]

On November 2, 2015, the landlord issued a 1 Month Notice to End Tenancy. The tenant applied to cancel the landlord’s 1 Month Notice for Cause, disputing that the landlord had sufficient reason, or cause to end the tenancy. The landlord made an application for an Order of Possession based on her 1 Month Notice to End Tenancy. That 1 Month Notice indicated that,

- Tenant is repeatedly late paying rent, particularly the portion of hydro that she is required to pay under the residential tenancy agreement.
- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- Tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord’s property;

- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
 - jeopardize a lawful right or interest of another occupant or the landlord;
- Tenant has not complied with an order under the legislation within 30 days after the tenant received the order...

Landlord BD testified that, after the RTB hearing on October 5, 2015, he continued to pay utilities for the residence. He testified that, in compliance with the order, he corresponded with the tenant by registered mail. He testified that he sent by email all of the most recent utility bills. He testified that the tenant has not paid all of the outstanding bills or subsequent utility bills. He testified that the tenant, as of the date of this hearing, had not put the utility bills in her name as agreed at the RTB hearing. He submits that these actions, or lack thereof, amount to non-compliance with an order under the legislation.

The landlord testified that the tenant has paid “rent”, specifically her portion of the utilities for this tenancy repeatedly late. The landlord testified that the tenant paid only partial rent in February; forgot to pay rent until the 22nd of the month in April; and did not make a rental payment from July 23, 2015 until December 21, 2015. The landlord testified that a demand letter for payment was sent to the tenant after the October 5, 2015 hearing. After that date, the tenant submitted partial payment on December 21, 2015. The landlord testified that \$817.50 still remains outstanding.

The landlord testified that the tenant has significantly interfered with or unreasonably disturbed another occupant, specifically the downstairs neighbours. The landlord testified that he has digital evidence showing the tenant behaving badly and bothering the downstairs neighbours but he decided not to submit it. The landlord testified that the downstairs neighbours have repeatedly complained about being sworn at by this tenant.

When asked for details on any illegal activity by the tenant, the landlords clarified that their allegations refer to interference and disturbance and not illegal activity.

The tenant testified that she gets along well with the other tenants and neighbours. She testified that she does not understand why the landlords are trying to end the tenancy in this fashion; that she does not disturb the landlord or the other occupants of the residential premises. She testified that, in her submission, the landlords always escalate matters further than they need to.

With respect to the actions to be taken as a result of the settlement agreement on October 5, 2015 through a RTB arbitrator, the tenant testified that she was dissatisfied

with the previous hearing. She testified that she received the original decision on or about October 5, 2015. She testified that she applied for a review of the original decision. She testified that she received a copy of the review decision, denying her application on or about December 5, 2015. She testified that she has received the materials provided by the landlords. She testified that she intends to comply with the order but she just hasn't had time yet.

The tenant sought a monetary order in the amount of \$5000.00. She testified that this amount represents compensation from the landlord for days she had to take off work in preparation for this hearing as well as the previous hearing. She testified that this amount also represents compensation from the landlord for "12 months of harassment" affecting the quality of her life. She described the inconvenience of addressing this matter but did not particularize or provide details supporting her claim.

The landlords sought a monetary order in the amount of \$817.50. Landlord EB testified that this amount represents the amount of utilities outstanding and owed by the tenant. Landlord EB testified that the tenant picks and chooses what she will pay in any given month. She claims that the tenant has made no effort to pay the outstanding utilities or put them in her name in accordance with the previous RTB hearing. The landlord submitted a monetary worksheet as well as copies of the utilities bills detailing their amount sought as follows,

Item	Amount
Outstanding amount of utilities - Tenant's portion	\$817.50
Registered mailing costs	22.68
Recovery of Filing Fee for this Application	50.00
Total Monetary Amount Sought by the Landlord	\$890.18

A witness testified on behalf of the tenant. He testified that he is a neighbour of the tenant at the residential premises. He discussed a dispute that he and the landlord had regarding a hedge. He testified that the landlord "harasses" the tenant about the utility bills and that he is not a friendly type of guy.

The tenant was given an opportunity to submit proof of payment after this hearing. She did not do so. She provided only her own list of amounts that she had paid. However, the landlords acknowledged that she had made some small payments and took those into consideration in providing the total amount owing by the tenant in utilities. The tenant's payments ranged from approximately \$6.00 to approximately \$30.00 with one payment over \$100.00. The landlord submitted that the bills have continued to accrue.

Analysis

When a tenant applies to cancel a notice to end tenancy, the burden shifts to the landlord to justify the notice issued. The tenant entered into written evidence a copy of the 1 Month Notice to End Tenancy for Cause. In that Notice, requiring the tenant to end this tenancy by November 30, 2015, the landlord cited the following reasons for the issuance of the Notice.

The landlord submitted no evidence and provided no testimony to support the proposition that this interference has been as a result of illegal activity by the tenant. The landlord submitted insufficient evidence to prove that the tenant has significantly interfered with or unreasonably disturbed the other occupants. The matter of repeatedly late payment of rent does not need to be considered further in the circumstances. I find that there is insufficient evidence with respect to the following grounds to end tenancy;

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- Tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
 - jeopardize a lawful right or interest of another occupant or the landlord.

I find that the landlord has provided sufficient evidence to show that the tenant has failed to comply with an order under the legislation within 30 days after the tenant received the order or the date in the order. The previous decision with respect to this tenancy and the payment of utilities was dated October 5, 2015. At that time, the parties resolved their dispute and entered into an agreement. As a result of that agreement, the arbitrator wrote a decision reflecting the details of the agreement. The provisions of the Act equate the written settlement agreement with an order of an arbitrator.

Given the tenant's acknowledgement of receipt of the order and given that the tenant has not taken the steps required in that previous agreement within 30 days of receipt of the order, I find that the tenant has failed to comply with an order under the legislation within 30 days. Therefore, I find that the landlord has proven a ground to end tenancy. The landlords made an application for an Order of Possession. I find the 1 Month Notice

to End Tenancy valid. Therefore, I find the landlords are entitled to a 2 Day Order of Possession.

The landlord has shown, in undisputed testimony as well as documentary evidence that the tenant has an outstanding balance of \$817.50 in utilities as a result of her failure to comply with the previous settlement agreement. I issue a monetary order to the landlord in this amount.

As the landlord has been successful in his application, I find that the landlord is entitled to recover the \$50.00 filing fee for this application.

Conclusion

The tenant's application is dismissed in its entirety.

I issue the landlord an Order of Possession Order of Possession to be effective two days after notice is served to the tenant(s). If the tenant(s) do not vacate the rental unit within the two days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

I issue the landlord a monetary order in the amount of \$817.50. The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: January 12, 2016

Residential Tenancy Branch

