



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MNSD, MNDC, CNC, FF

Introduction

This hearing dealt with two related applications. One was the landlord's application for an order of possession based upon a 1 Month Notice to End Tenancy for Cause, a monetary order and an order permitting retention of the security deposit in full or partial satisfaction of the claim. Both parties appeared. No issues regarding service or evidence were raised.

Although the tenants had not included a claim for a monetary order on their Application for Dispute Resolution a great deal of the evidence filed was devoted to the tenants' claim for reimbursement of payments made for hydro. The landlord and the tenants agreed that this claim would be heard and decided in this hearing.

Issue(s) to be Decided

- Is the 1 Month Notice to End Tenancy for Cause dated November 4, 2015 valid?
- Are either party entitled to a monetary order and, if so, in what amount?

Background and Evidence

This month-to-month tenancy commenced July 1, 2015. The monthly rent of \$1300.00 is due on the first day of the month. The tenants paid a security deposit of \$650.00.

The rental unit is one of two rental units in a two level house. The other rental unit was vacant for part of this tenancy.

The September rent was not paid until September 10, 2015.

In the fall the landlord hired the female tenant to clean the downstairs unit. There was a dispute about the tenant's bill for cleaning. The tenants paid the October rent on October 2, 2015, and deducted the disputed amount - \$133.32 – from the October rent without the consent of the landlord.

The tenants paid the November rent on November 3, 2015.

The written tenancy agreement provides that hydro is not included in the rent. The tenants made the necessary arrangements to have the hydro account put into their name.

There are separate electrical panels for the upstairs and downstairs units but some of the electrical services that are exclusive to the downstairs unit or shared by both sets of tenants are attached to the upstairs panel. The following services are not used exclusively by the upstairs tenants and are in dispute:

- The hot water tank
- The downstairs washer and dryer
- The electric baseboard heat in one of the downstairs bedrooms
- The lighting and plug-ins in that bedroom and the laundry area.

The landlord testified that she forgot to discuss this situation with the tenants. When the tenants became aware of this arrangement and raised the issue with the landlord in mid-September.

The tenants set out their claim in a letter to the landlord dated October 22, 2015. They state that when they compared the bills from their last home to the bills received for this rental unit the difference between the two for the same billing periods was \$48.00 and \$16.00 respectively. They also state that the lower rental unit was not occupied for the period when the difference was \$16.00 per month.

The tenants state that their increased cost for the four months covered by the two invoices was \$64.00 and they express concern about increased costs in the winter months.

The tenants ask for a rent reduction of \$60.00 per month until a separate hot water heater is installed for their unit. The landlord did not agree to this request.

The hydro bill for the period July 1 to October 13 totalled \$336.64. The tenants deducted \$174.00 from the December rent, which was paid on December 1. This does not equal \$60.00 per month since the start of the tenancy. It does equal 52% of the hydro bills received by the tenants to date. This percentage is particularly difficult to understand when you consider that the tenants were the sole occupants of the house for part of this billing period.

The hydro bill for the period October 14 to December 10 was \$305.78. The tenants deducted \$60.00 from the January rent, which was paid on January 1, 2016. Once again, this does not equal \$60.00 per month since the previous deduction. It does equal 20% of the bill.

The landlord issued a 1 Month Notice to End Tenancy for Cause on November 4, 2015. The reason stated on the notice was that the tenants were repeatedly late paying rent. The notice was posted at the rental unit on November 4. The tenants filed this application disputing the notice on November 16, 2-15, within the time required to do so.

The effective date of the notice was December 31, 2015. As set out above the tenants paid the January rent. The landlord testified that she gave a receipt marked "for use and occupancy only" for the payment. The tenant testified that she could not remember if the receipt was marked in this way but also said she did not have the receipt in front of her.

Analysis

The *Residential Tenancy Policy Guidelines*, available on-line at the Residential Tenancy Branch web site, provide succinct summaries of the legislation and the common law applicable to residential tenancies in British Columbia. Those guidelines will be referenced in the course of this decision.

Section 26(1) of the *Residential Tenancy Act* provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulation or the tenancy agreement, unless the tenant has an order from the Residential Tenancy Branch allowing the tenant to withhold payment of all or any portion of the rent.

If a tenant has a claim against a landlord the proper procedure is to apply for dispute resolution and obtain an order allowing the tenant to withhold money from the rent.

Section 47(1) allows a landlord to end a tenancy where the tenant is repeatedly late paying rent. The applicable law is explained in *Residential Tenancy Policy Guideline 38: Repeated Late Payment of Rent*. The *Guideline* states that three late payments are the minimum number sufficient to justify a notice under this section.

The evidence is that the tenants paid the rent late in September, October and November and that they withheld a portion of the rent without the legal right to do so in October, December and January.

I find that the landlord does have cause to end this tenancy and the 1 Month Notice to End Tenancy dated November 4, 2015, is valid.

The tenants paid the rent for January. I accept the landlord's evidence that she gave the tenants a receipt that made it clear the rent was being accepted "for use and occupancy only" and did not reinstate the tenancy.

As the rent has been paid to the end of January the order of possession will be effective January 31, 2016.

The Residential Tenancy Branch has no jurisdiction over the disputed cleaning bill because this contract was a contract for services unrelated to the tenancy. The tenant had no legal right to deduct the unpaid cleaning bill of \$133.32 from the rent but she does have the right to pursue this claim in Small Claims Court.

Section 6(3)(b) specifies that a term of a tenancy agreement is not enforceable if the term is unconscionable. I find that requiring the tenants to pay a portion of the other tenant's hydro use is unconscionable.

Section 7(1) provides that if a landlord or a tenant does not comply with the Act, regulation or tenancy agreement the non-complying landlord or tenant must compensate the other for the damage or loss that results.

As explained in *Residential Tenancy Policy Guideline 16: Claims in Damages*: "An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury."

It is not reasonable to expect that the hydro bills for this home would be exactly the same as the last home occupied by the tenants unless both homes, the appliances, usage and relevant hydro rates were exactly the same. The evidence did not establish that.

I accept the tenants' evidence that they are not using the baseboard heaters in their unit and that their usage has remained about the same throughout the tenancy. The invoice for the period August 17 to October 13, rendered when the tenants were the sole occupants of the house, is a good indicator of the base line usage for this rental unit by these tenants. It is also reasonable to conclude that the new downstairs tenant has been using the electric heat to keep the bedroom warm for the period October 14 to December 10.

Applying a base rate of \$158.42 to the tenants' hydro usage, their share of the three hydro bills submitted into evidence would be \$574.26. The invoices rendered by BC Hydro for this period was \$642.42. I find that the tenants are entitled to reimbursement from the landlord in the amount of \$167.16. The tenants have deducted the sum of \$174.00 for hydro, an over deduction of \$6.84.

In summary I find that the landlord is entitled to arrears of rent in the amount of \$307.32 and the tenants are entitled to reimbursement for the hydro in the amount of \$167.16. Setting one amount against the other I find that the landlord is entitled to payment from the tenants in the amount of \$140.16.

As both parties have been partially successful on their respective applications no order regarding the filing fee paid by either party will be made. Each will bear their own expense for filing their application for dispute resolution.

Conclusion

- a. The 1 Month Notice to End Tenancy for Cause dated November 4, 2015 is valid. An order of possession effective January 31, 2016 has been granted to the landlord. 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 \$140.16 is granted to the landlord. Pursuant to section 72 that amount may be deducted from the security deposit in full satisfaction of the claim.

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 20, 2016

Residential Tenancy Branch

