



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP

Introduction

The tenants apply to cancel a ten day Notice to End Tenancy dated January 30, 2016 and received January 31 for unpaid utilities and for a repair order regarding a door frame, holes in walls, floor repair, windows and a key for the door.

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the tenants have not paid utility charges after written demand, justifying the ten day Notice? Does it show that the tenants are entitled to a repair order?

Background and Evidence

The rental unit is a two bedroom ground level suite on one side of a duplex. The upper portion of that side of the duplex is rented to others. The landlord also rents out the other side of the duplex.

This tenancy started in July 2015. The monthly rent is currently \$850, due on the first of each month. The landlord holds a \$450.00 security deposit.

The landlord says there is a written tenancy agreement. The tenants say there isn't.

The landlord produces a document signed by the tenants dated June 25, 2015 entitled "Rental Agreement." The document does not indicate who the landlord is or an address for the landlord. It has not been signed by the landlord or anyone on behalf of the landlord. The document does not refer to any "tenant" but rather speaks of the

“applicant.” The document says that “I” (the applicant) “further agree to pay for electricity and telephone charges for the period of my tenancy.”

The landlord testified that the electricity usage for both the upper and lower rental units on this side of the duplex are measured through one meter. Similarly, the gas, which provides the heat and hot water to both units, is measured through a single meter.

She says the tenants agreed to put the electricity account for both suites in their own name but didn't. She claims that these tenants were to pay the electricity for both rental units and that the upper tenants were to pay the full gas bill. The tenants deny it, saying the rent includes power and gas.

The landlord says she has estimated the power usage for both suites at \$75.00 per month. The tenants paid her \$60.00 towards the power usage some months ago. She calculated that the tenants owe her \$75.00 for seven months, less the \$60.00, and so she inserted the amount of \$465.00 in the ten day Notice.

She has not presented the tenants with any electricity (Hydro) bills.

The tenant Ms. B.B. says the Hydro is in the name of the upstairs tenant.

The tenants claim that there is a drainage problem for their washer. There is no drain and the “taps blew” in January when they tried to use a bucket as a drain.

They say the dryer plug does not work and that many electrical plugs are “loose.”

Ms. B.B. says that the landlord fixed a door but did not provide a key.

She says that she put up a mailbox for her suite on the exterior of the house but the landlord took it down. The landlord denies it. Mr. K.C. says he saw her do it.

She claims that the lower suite is an “illegal” suite but did not provide any detail.

Analysis

The landlord indicated that her daughter, apparently the owner of the building, is the true landlord. All interactions with these tenants have been through Ms. K.B., not the daughter. There is no written document indicating the daughter is the landlord.

I find that the landlord of these two tenants is the respondent Ms. K.B.

The landlord has put herself in a very difficult position by not preparing a written tenancy agreement. While the document presented by her has some aspects of a tenancy agreement, it lacks one essential; the name of the landlord. Without that, it cannot be considered to be a contract; a tenancy agreement.

Nevertheless, I consider it evidence of what the tenants were applying for and that was a tenancy under which they were to pay for electricity and telephone. In the absence of any evidence to the contrary, I conclude that they entered the tenancy on that basis. I find that it was a term of the tenancy that the tenants were to pay for their own electricity.

There is no obligation on these tenants to pay the entire Hydro bill for the duplex, any more than they are required to pay the telephone bill for the upstairs suite.

Once again, the landlord has put herself at a distinct disadvantage, because she cannot accurately measure the electricity the tenants use as it is measured through a single meter that includes the electrical consumption in the rental unit above.

Until she can accurately measure electrical consumption in this rental unit, she cannot fairly demand the tenants pay for their consumption. I would suggest she contact BC Hydro or an electrician, to devise a way to measure this rental unit's consumption or, alternatively, perhaps strike an agreement with these tenants to pay a proportion of the total Hydro bill.

As a result, the ten day Notice issued by the landlord for the tenants' alleged failure to pay \$465.00 in utilities, was based on an estimate by the landlord, not a sum certain and so it cannot stand as a valid Notice. I hereby cancel it.

The tenants have come to this hearing claiming significant repair items in the home but have provided nothing of the normal corroborating or supporting evidence. No tradesmen have quoted for the repairs or provided evidence of defects. There were no photos of the allegedly defective flooring and walls. Especially in these times when persons of the most humble levels of society have or have access to cell phones with cameras, it speaks to the seriousness of the claim when such evidence is absent.

In this case, in the face of the landlord's denials, the tenants have not proved on a balance of probabilities that any plumbing repair is required or that door frame needs repair or that there are holes in the wall of such significance as to require repair by the

landlord or that there is anything wrong with the flooring in the home or that the windows don't close.

I dismiss those items of the claim.

In regard to the door and key issue, the evidence is so scarce that no reasonable conclusion can be reached about what has gone or what the circumstances are. But, if the landlord, in repairing a door, has caused the lock to change or be removed, she is responsible to provide the tenants with a locking door a working key. If she has not and refuses to do so, the tenants may conduct the repair at their own cost and present the landlord with the bill (and a key). If the landlord refuses to pay it in a timely fashion, I grant the tenants leave to re-apply to recover that cost.

Conclusion

The ten day Notice to End Tenancy dated January 30, 2016 is cancelled.

The remainder of the tenants' claim is dismissed, but for the lock and key issue, which is dismissed with leave to re-apply on the terms above.

There is no claim to recover any filing fee.

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: March 26, 2016

Residential Tenancy Branch

