



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, CNR, ERP, RP, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent and Utilities; a monetary Order for unpaid rent and utilities; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on September 27, 2016 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord submitted with the Application for Dispute Resolution were sent to the Tenants, via registered mail. The Tenants acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The Tenants filed an Application for Dispute Resolution, in which the Tenants applied to cancel a Notice to End Tenancy for Unpaid Rent and Utilities and for an Order requiring the Landlord to make repairs to the rental unit. The Tenant withdrew the application for an Order requiring the Landlord to install a lock on the door to the rental unit, as a lock has now been installed.

The female Tenant stated that on September 15, 2016 or September 16, 2016 the Application for Dispute Resolution, the Notice of Hearing and 4 pages of evidence the Tenants submitted to the Residential Tenancy Branch were personally served to the Landlord. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The Landlord submitted a significant amount of documentary evidence that is not directly relevant to the issues in dispute at these proceedings. All of the documentary evidence has been reviewed but is not necessarily referenced in this decision

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

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

Is the Landlord entitled to a monetary Order for unpaid rent and utilities?

Background and Evidence

The Landlord and the Tenants agree that:

- the Tenants moved into the rental unit at the invitation of a third party, who had a tenancy agreement with the Landlord;
- when the third party moved out of the residential complex the Landlord and the Tenants verbally agreed that the Tenants could continue living in the rental unit, which is located in the lower portion of the residential complex;
- the Tenants agreed to pay the Landlord rent of \$1,000.00 by the first day of each month;
- the Tenants agreed to pay 50% of the hydro and gas bills;
- the parties were unable to reach an agreement about some terms of the tenancy, including whether or not the Tenants had the right to use outbuildings;
- the Tenants have paid no rent for September or October of 2016;
- on September 10, 2016 the Landlord personally served the Tenants with a Ten Day Notice to End Tenancy for Unpaid rent and Utilities;
- the Ten Day Notice to End Tenancy declared that the Tenants must vacate the rental unit by September 29, 2016; and
- the Tenants are still occupying the rental unit.

The Landlord stated that the first monthly rent payment was due to him on May 01, 2016. The female Tenant stated that the first monthly rent payment was due to the Landlord on April 01, 2016.

The female Tenant stated that:

- they did not pay their rent for September because the Landlord did not provide them with an adequate method of securing the front door;
- the Landlord installed a lock on the front door in October of 2016;
- the Tenants purchased a lock for the front door with the intent of installing it themselves;
- the Tenants were unable to install the lock so they returned it to the store;
- the Tenants did not provide the Landlord with a receipt for the lock they purchased because they returned the lock; and
- the Tenants did not have a lock installed by a third party.

The Landlord is seeking compensation for 50% of the hydro bill for the period between June 16, 2016 and August 16, 2016. The Landlord submitted a copy of this bill for \$155.25. The Tenants acknowledged that they have not paid 50% of this bill.

The Landlord is seeking compensation for 50% of the gas bill for the period between July 18, 2016 and August 18, 2016. The Landlord submitted a copy of this bill for \$76.70. The Tenants acknowledged that they have not paid 50% of this bill.

The Landlord is seeking compensation for 50% of the gas bill for the period between August 18, 2016 and September 19, 2016. The Landlord submitted a copy of this bill for \$109.31. The female Tenant acknowledged that the Tenants have not paid 50% of this bill.

The Landlord is seeking compensation \$75.00 for the estimated costs of upcoming hydro charges and \$100.00 for the estimated costs of upcoming gas charges.

Analysis

On the basis of the undisputed evidence I find that the Landlord and the Tenants entered into a verbal tenancy agreement which required the Tenants to pay monthly rent of \$1,000.00 by the first day of each month. As the parties agreed to pay this amount, I find they were obligated to pay that amount even though they were unable to reach an agreement on other terms of the tenancy.

On the basis of the undisputed evidence I find that the Tenants did not pay any rent for September or October of 2016. As the Tenants are required to pay rent pursuant to section 26(1) of the *Residential Tenancy Act (Act)*, I find that the Tenant must pay \$2,000.00 in outstanding rent to the Landlord.

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days, by providing proper written notice, if rent is not paid when it is due. On the basis of the undisputed evidence I find that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that is the subject of this dispute was personally served to the Tenants on September 10, 2016.

As the Tenants have not paid the outstanding rent since the Ten Day Notice to End Tenancy was served to them, I find that the Landlord has grounds to end this tenancy pursuant to section 46 of the *Act*. I therefore grant the Landlord's application for an Order of Possession and I dismiss the Tenants' application to set aside the Notice to End Tenancy.

In adjudicating this matter I was mindful of section 33 of the *Act* which authorizes a tenant to deduct an amount that the tenant paid for emergency repairs in certain circumstances. As there is no evidence that the Tenants paid anything for emergency repairs, I find that they did not have the right to withhold rent for September pursuant to section 33 of the *Act*.

On the basis of the testimony of both parties I find that the Tenants agreed to pay 50% of the utility charges for the rental unit. Although in an email, dated May 29, 2016, that the Landlord submitted the Tenant agreed to pay 1/3 of the rent, I have relied on the testimony the female Tenant provided during the hearing.

As the Tenants acknowledged that they did not pay their portion of copy of the hydro bill for \$155.25, I find that they are obligated to 50% of the bill, which is \$77.63.

As the Tenants acknowledged that they did not pay their portion of copy of the gas bills for \$76.70 and 109.31, I find that they are obligated to 50% of the bills, which is \$93.00.

Although the Tenants are obligated to pay 50% of all gas and hydro charges incurred during the tenancy, I find that they are not obligated to pay those charges until the Landlord can produce the bills to establish the true costs of hydro and gas. I therefore dismiss the Landlord's application of \$75.00 for the estimated costs of upcoming hydro charges and \$100.00 for the estimated costs of upcoming gas charges. The Landlord retains the right to file another Application for Dispute Resolution seeking compensation for those charges if the Tenants do not agree to pay those costs once they are presented with a hydro/gas bill.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on October 31, 2016. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$2,270.63, which includes \$2,000.00 in unpaid rent, \$77.63 for hydro, \$93.00 for gas, and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for \$2,270.63. In the event the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order 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: October 26, 2016

Residential Tenancy Branch