Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPL, MNR

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession and a monetary Order for unpaid rent or utilities. As the rental unit has been vacated, there is no need to consider the application for an Order of Possession. It is readily apparent from information provided with the Application that the Landlord is seeking compensation for cleaning the rental unit and that matter will be considered at these proceedings.

The Landlord stated that on November 03, 2016 the Application for Dispute Resolution and the Notice of Hearing were personally served to the female Tenant. The Tenant acknowledged receiving these documents, although she believes she received them on November 01, 2016.

The Landlord stated that the Application for Dispute Resolution and the Notice of Hearing were not served to the respondent with the initials "A.A.", who is a young child. The Landlord asked that her Application for Dispute Resolution be amended by removing the child as a named respondent. The Application has been amended accordingly and any Order issued as a result of these proceedings will not name this child.

On December 08, 2016 the Landlord submitted an Amendment to an Application for Dispute Resolution to the Residential Tenancy Branch. In the amendment the Landlord increased the total amount of her claim from $2,768.50 to $3,766.93 by;

- adding a claim of unpaid rent/lost revenue for December of 2016;
- reducing the amount claimed for garbage disposal from $350.00 to $150.00;
- increasing her claim for cleaning from $240.00 to $300.00; and
- increasing her claim for unpaid utilities from $178.50 to $416.93.

The Landlord stated that the Amendment to the Application for Dispute Resolution was not served to the Tenant, as she was not given a forwarding address for the Tenant. As the Amendment has not been served to the Tenant, I find that the Application for Dispute Resolution has not been amended. Any additional claims made in the

Amendment will, therefore, not be considered at these proceedings. The Landlord retains the right to file another Application for Dispute Resolution claiming compensation for claims not considered at these proceedings.

On November 03, 2016 the Landlord submitted 78 pages of evidence to the Residential Tenancy Branch. The Landlord stated that these documents were personally served to the Tenant with the Application for Dispute Resolution on November 03, 2016.

On December 08, 2016 the Landlord submitted 43 pages of evidence to the Residential Tenancy Branch. The Landlord stated that most of these documents were personally served to the Tenant with the Application for Dispute Resolution on November 03, 2016. She stated that the garbage disposal bill, the hydro bill of December 05, 2016, and a direct request worksheet that were submitted to the Residential Tenancy Branch on December 08, 2016 were the only documents that were not served to the Tenant on November 03, 2016.

The Landlord stated that after being served with documents on November 03, 2016 the Tenant threw the documents back at the Landlord.

The Tenant stated that when the Landlord served her with the Application for Dispute Resolution she also gave her approximately 15 pages of evidence, which the Tenant threw “towards” the recycling bin. The Tenant stated that she subsequently picked up those pages of evidence.

The Landlord stated that an RCMP officer was present on November 03, 2016 when she served her evidence to the Tenant. The Landlord submitted a Proof of Service that appears to be signed by a police constable, in which that party declares he observed the Landlord serve an eviction notice and a “large stack of paper” to the Tenant.

The Agent for the Tenant stated that in addition to documents generated by the Residential Tenancy Branch the Tenant only received approximately10 pages of evidence on November 03, 2016. When asked to describe the documents received as evidence the Landlord described 25 pages of evidence which were contained in the Landlord’s evidence package.

Much later in the hearing the Tenant acknowledged receiving 13 photographs in the documents served to her on November 03, 2016. Upon questioning the Agent for the Landlord stated that he was unaware that the Tenant had received these photographs with the evidence package.

I find that the testimony of both parties regarding the submission of evidence is unreliable.

While I accept that a large amount of evidence was served to the Tenant on November 03, 2016, I find that not all of the evidence submitted by the Landlord could have been served on November 03, 2016. In reaching this conclusion I was influenced by the fact

that the two Proofs of Service submitted in evidence by the Landlord were not signed until November 12, 2016. As some of the evidence came into existence after it was allegedly served on the Tenant, I find I cannot fully rely on the Landlord's testimony regarding service of documents.

I find the Tenant's evidence unreliable because the Tenant did not acknowledge receiving several photographs as evidence at the beginning of the hearing when the Agent for the Tenant was directed to describe all of the evidence that had been received by the Tenant. In my view the Tenant's subsequent acknowledgement that she had been served these photographs renders her testimony unreliable in regards to evidence received.

I note that the Proof of Service from the individual who witnessed the service of documents is not particularly helpful, as he simply declared that a "large stack of paper" was served to the Tenant. This is a subjective term and does not help me determine whether the Tenant received 45+ pages of evidence or 100+ pages of evidence.

As I could not determine, with any certainty, that all of the evidence was received by the Tenant, all of the evidence submitted by the Landlord was not accepted as evidence.

Any evidence the Tenant acknowledged receiving from the Landlord during the hearing was accepted as evidence for these proceedings. I specifically note that I have only considered documents that the Tenant has acknowledged receiving.

For reasons outlined in my interim decision of December 16, 2016 this hearing was reconvened on January 18, 2017 and was concluded on that date.

As outlined in my interim decision of December 16, 2016, the Landlord was directed to re-serve the Tenant with a copy of the tenancy agreement the Tenant signed at the start of the tenancy. At the hearing on January 18, 2017 the Landlord stated that the tenancy agreement was re-served to the Tenant, via registered mail, on January 05, 2017. On the basis of the Landlord's testimony and in the absence of any evidence to the contrary, I find that this tenancy agreement was served to the Tenant and it was accepted as evidence for these proceedings.

At the hearing on December 16, 2016 both parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The only matter discussed at the hearing on January 18, 2017, which the Tenant did not attend, was the clause in the tenancy agreement that authorizes the Landlord to increase the rent by $200.00.

Preliminary Matter

The Agent for the Tenant stated that on December 13, 2016 the Tenant filed a claim with the Supreme Court of British Columbia, in which she claimed compensation for unconscionable collection practices, which relate to the Landlord's attempts to collect money during this tenancy. He stated that the Landlord has not yet been served with notice of this claim and that the Tenant did not submit any evidence to the Residential Tenancy Branch regarding this claim

The Landlord stated that she is not aware that she has been named in a Supreme Court matter.

Section 58(2)(c) of the *Residential Tenancy Act* directs me to resolve issues outlined in an Application for Dispute Resolution unless the dispute is linked substantially to a matter that is before the Supreme Court. Even if I accepted the Agent for the Tenant's testimony, in the absence of supporting documents, that a claim has been filed for unconscionable collection practices, I would retain jurisdiction over the issues in dispute at these proceedings.

I find that the Tenant's obligation to pay rent, to pay utilities, and to leave the rental unit in reasonable condition at the end of the tenancy is not substantially linked to an allegation that the Landlord engaged in unethical or unlawful business practices. I find that even if a court of higher authority awards compensation to the Tenant that relates to unethical or illegal business practices, I still have authority to determine whether the Tenant has complied with her obligations under the *Act.*

Issue(s) to be Decided

Is the Landlord entitled to compensation for cleaning the rental unit and to compensation for unpaid rent/utilities?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began in 2013;
- when the tenancy began the Tenant signed a tenancy agreement;
- at the start of the tenancy the Tenant agreed to pay rent of $700.00 by the first day of each month;
- at the start of the tenancy the Tenant agreed to pay one-third of the hydro bill;
- on August 31, 2016 the Landlord served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property;
- the Two Month Notice to End Tenancy declared that the Tenant must vacate the rental unit by October 31, 2016;
- the Tenant paid $700.00 in rent for September; and
- the Tenant paid no rent for any period after September 31, 2016.

There is a clause in the tenancy agreement that was signed by the Tenant which stipulates the rent will increase by $200.00 if an additional occupant moves into the rental unit, effective from the date the new occupant moves into the rental unit.

The Tenant stated that she vacated the rental unit on November 13, 2016. The Landlord stated that she is not certain when the unit was vacated, although she knows it was vacated by November 15, 2016.

The Landlord stated that the Tenant verbally agreed to increase the rent from $700.00 to $900.00, effective August 01, 2016. In regards to the rent increase the Landlord stated that:

- the Tenant agreed to the increased rent because her boyfriend had moved into the unit;
- the Landlord asked the Tenant to sign a new tenancy agreement that indicated $900.00 in rent was due;
- the Tenant did not sign a new tenancy agreement;
- sometime in August or September the Tenant sent the Landlord a text message in which she agreed to paid $900.00 in rent for August; and
- the Tenant paid the increased rent for August of 2016.

The Tenant stated that she was coerced into agreeing to pay $900.00 in rent for August of 2016; that she paid $900.00 in rent for August; and that she subsequently concluded that the rent increase was unlawful. She stated that she felt pressured into agreeing to pay the increased rent because:

- the Landlord told her that she would apply to the Residential Tenancy Branch for a rent increase of more than $900.00 if the Tenant did not agree to pay rent of $900.00;
- the Landlord told her she would inform the Provincial Government that her boyfriend was living with her if she did not agree to pay rent of $900.00; and
- the Landlord “hinted” that she would be evicted if she did not agree to pay rent of $900.00.

The Landlord stated that she did not threaten to inform the Provincial Government that the Tenant’s boyfriend was living with her and she did not threaten the Tenant with eviction if she did not agree to pay rent of $900.00.

The Tenant stated that sometime in August of 2016 she sent the Landlord a text message, in which she agreed to pay $900.00 in rent for August of 2016. Although neither party recalls precisely when this text message was sent, they both agree that the evidence submitted by the Landlord does not reflect the date the text was actually sent.

The Landlord is seeking $200.00 in rent for September, $900.00 in rent for October, and $900.00 in rent for November. The Landlord stated that she has still not moved back

into the rental unit, as she intends to do, as she wishes to make repairs to the rental unit prior to moving into the unit.

The claim for unpaid rent for December was not considered at these proceedings, as the Landlord did not serve the Tenant with the Amendment to the Application for Dispute Resolution and did not, therefore, properly notify the Tenant of her intent to claim compensation for lost revenue for that month.

The Landlord stated that the Tenant verbally agreed to pay 50% of the hydro bill, effective August 01, 2016, because her boyfriend was living in the rental unit. The Tenant stated that she agreed to pay 50% of the hydro bill for the same reasons she agreed to the rent increase.

The Landlord is seeking compensation for the Tenant's portion of the hydro bill she received on October 05, 2016. In support of this claim the Landlord submitted an email, dated October 05, 2016, in which BC Hydro declared that $357.33 is currently due, and that this includes charges which are past due. The Landlord stated that she has reduced this bill by the amount past due and concluded that the remaining charges for this bill were $286.33. Although she is not certain, she thinks this bill was from August and September of 2016.

The Tenant acknowledged that she was in receipt of the email dated October 05, 2016. The Agent for the Tenant noted that the email is not a bill, as it does not provide any details of the charges, including the cost of hydro during the current billing period or the cost of hydro from previous billing periods. The Tenant stated that she cannot be certain how much of this bill relates to the billing period ending October 05, 2016 and how much relates to the previous billing period, which she has paid. The Tenant acknowledged that she has not paid any of the hydro costs for the billing period ending October 05, 2016.

The claim for a portion of the hydro bill the Landlord received on December 06, 2016 was not considered at these proceedings, as the Landlord did not serve the Tenant with the Amendment to the Application for Dispute Resolution and did not, therefore, properly notify the Tenant of her intent to claim compensation for those charges. The Landlord retains the right to file another Application for Dispute Resolution claiming compensation for these charges.

The Tenant stated that she paid 50% of the hydro charges from July and August of 2016 and that she is entitled to a refund, as she was only obligated to pay one-third of those charges. She stated that she paid $150.00 for hydro on August 05, 2016, although she does not recall the amount of the actual bill.

The Landlord stated that she does not recall the amount of the hydro bill for July and August of 2016 and she does not recall how much the Tenant paid for that bill. She stated that she did not bring that information with her as she did not know that issue would be raised at these proceedings.

In the Application for Dispute Resolution the Landlord claimed $690.00 for cleaning the rental unit, which included $350.00 in disposal fees and $240.00 for labour. As the Landlord did not serve the Tenant with the Amendment to the Application for Dispute Resolution, I find that she has not properly notified the Tenant of her intent to increase the amount of the claim for labour and that the claim for labour remains at $240.00.

The Landlord submitted 13 photographs of the rental unit, which she contends fairly represent the condition of the unit at the end of the tenancy. She stated that there were many other areas of the rental unit that required cleaning but she did not submit photographs of those areas.

The Tenant stated that she has viewed the photographs and that they fairly represent the condition of those areas of the rental unit at the end of the tenancy. The Tenant stated that she cleaned many other areas in the unit that are not shown in those photographs.

The Landlord stated that she has spent at least 20 hours cleaning the rental unit. The Tenant estimates it would have only taken 4 hours to clean the rental unit.

The Tenant stated that she did not clean the stove or the carpet in the rental unit because the Landlord told her she was going to discard these items. The Landlord denies this allegation.

The Landlord submitted a receipt for disposal costs, which was not served to the Tenant.

Analysis

On the basis of the undisputed evidence, I find that when this tenancy began the Tenant signed a tenancy agreement in which she agreed to pay monthly rent of $700.00.

Sections 41, 42, and 43 of the *Residential Tenancy Act (Act*) relate to how rent can be increased. Section 40 of the *Act* stipulates that a "rent increase" does not include an increase in rent that is for one or more additional occupants and is authorized under the tenancy agreement by a term referred to in section 13(2)(f)(iv) of the *Act.* As there is a term in the tenancy agreement that authorizes the Landlord to increase the rent by $200.00 if an additional person moves into the rental unit, I find that the Landlord had the right to impose a rent increase for this reason without complying with any of the stipulations of sections 41, 42, or 43 of the *Act.*

As the Tenant acknowledged that her boyfriend was living in the rental unit in August of 2016, I find that the Landlord had the right to impose the rent increase of $200.00 outlined in the tenancy agreement, effective August 01, 2016.

The undisputed evidence is that the Tenant paid $700.00 in rent for September. I therefore find that the Tenant still owes $200.00 in rent for September of 2016.

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end a tenancy under section 49 of the *Act* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

On the basis of the undisputed evidence that the Tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49 of the *Act,* I find that the Tenant is entitled to the equivalent of one month's free rent. I therefore find that she was not required to pay rent for October of 2016, pursuant to section 51(1) of the *Act,* and I dismiss the Landlord's claim for unpaid rent from October of 2016.

As the Tenant did not dispute the Two Month Notice to End Tenancy for Landlord's Use of Property, which declared that she must vacate the rental unit by October 31, 2016, I find that she was obligated to vacate the unit by that date.

As the Tenant did not vacate the rental unit by October 31, 2016, I find that the Tenant is obligated to pay rent, on a per diem basis, for the days the Tenant remained in possession of the rental unit. As the Tenant acknowledged remaining in the rental unit until November 13, 2016, I find that the Tenant must compensate the Landlord for those 13 days, at a daily rate of $30.00, which equates to $390.00. I am unable to order the Tenant to pay rent for any period after November 13, 2016, as there is insufficient evidence to establish that she remained in the rental unit after that date.

I find that the Tenant breached section 49(9) of the *Act* when she did not vacate the rental unit by October 31, 2016. I am unable to award compensation for lost revenue for any period after November 13, 2016, however, as the Landlord had no intention of re-renting the unit for November of 2016. As the Landlord did not intend to re-rent the unit in November, I cannot conclude that she suffered a loss of revenue as a result of the failure to vacate.

On the basis of the undisputed evidence I find that when this tenancy began the Tenant agreed to pay one-third of the hydro bill as a term of the tenancy agreement. I find that any attempt to increase the portion of hydro to be paid constitutes a rent increase.

Section 43(1)(c) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount agree to be the tenant in writing. Even if I accepted that the Tenant agreed, in writing, to pay 50% of the hydro bill, I would find that the Landlord did not have the right to collect 50% of the hydro bill.

Section 42(3) of the *Act* stipulates that a landlord must provide a tenant notice of a rent increase at least 3 months before the effective date of the increase. Even if I concluded that the Tenant agreed, in writing, to a rent increase of $200.00, I find that the Landlord would not be entitled to collect that rent increase for at least three months

after serving the Tenant with proper notice of the increase. Had the Landlord provided the proper notice to the Tenant on August 31, 2016, for example, the earliest effective date of that rent increase would have been December 01, 2016.

Section 42(4) of the *Act* stipulates that a landlord must give a tenant notice of a rent increase in the form approved by the Residential Tenancy Branch. RTB-7 is the approved form for serving a tenant with notice of a rent increase. RTB-7 contains very important information, including the fact that a tenant is entitled to three months' notice of a rent increase.

There is no evidence that the Landlord provided the Tenant with notice of a rent increase in the approved form or on a form that informed the Tenant that she was entitled to three months' notice of the rent increase. I therefore find that the Landlord did not have the right to collect 50% of the hydro bill because the Landlord did not provide the Tenant with proper notice of that rent increase, as required by section 42(4) of the *Act.*

There is a general legal principle that places the burden of proving a claim of the person who is claiming compensation, not on the person who is denying the claim. In these circumstances the burden of proving the amount of hydro due rests with the Landlord.

I find that the Landlord has submitted insufficient evidence to establish that $286.33 of the $357.00 hydro bill she received on October 05, 2016 was the amount owing for the billing period ending October 05, 2016. In reaching this conclusion I was heavily influenced by the fact the Landlord did not provide the Tenant with a detailed copy of the bill. I find it irrelevant that the Landlord receives electronic bills from BC Hydro, as customers have the ability to view and print detailed bills even when they receive bills electronically.

I find that when a tenant is required to pay a portion of a hydro bill the landlord has an obligation to provide the tenant with a detailed copy of that bill so a tenant can satisfy themselves they are not overpaying a bill. I find that to be particularly true in these circumstances, where the email provided to the Tenant clearly specifies that some of the charges are from an amount past due. As the Landlord has not provided a detailed copy of the bill, I find that she has failed to establish the amount the Tenant owes for this bill. I therefore dismiss her claim for compensation for any portion of the hydro bill she received on October 05, 2016.

As the Tenant has not filed an Application for Dispute Resolution claiming a refund for a hydro overpayment she contends she made in August of 2016, I have not considered that matter at these proceedings. I find that it would be unfair to consider that matter at these proceedings as the Landlord did not have any prior notice that the issue would be raised and she was not, therefore, prepared to respond to the allegation. The Tenant retains the right to file an Application for Dispute Resolution seeking to recover this alleged overpayment.

On the basis of the photographs submitted in evidence I find that the Tenant failed to comply with section 37 of the *Act* when she failed to leave the rental unit in reasonably clean condition. Even if some cleaning was completed elsewhere in the rental unit those photographs convince me that additional cleaning was required.

On the basis of those photographs I find it reasonable to conclude that it would have taken several hours to clean the unit and to dispose of the garbage left behind. I find that the Tenant's estimate that it would only have taken four hours is less credible than the Landlord's testimony that she spent 20 hours cleaning the unit. As I believe it would have taken significant amount of time to clean the rental unit, I find that the Landlord is entitled to compensation for time spent cleaning the unit, in the amount of $240.00, which is the amount of her original claim.

In addition to establishing that a tenant failed to adequately clean a rental unit, a landlord must also establish the costs associated to cleaning the unit whenever the landlord is claiming compensation for such costs. I find that the Landlord failed to establish the true cost of disposing of the garbage left in the rental unit. In reaching this conclusion I was strongly influenced by the fact that the disposal receipt the Landlord submitted to the Residential Tenancy Branch was not served to the Tenant and cannot, therefore, be considered during this adjudication.

When receipts are available I find that a party seeking compensation for those expenses has a duty to serve the receipts to the other party. As I am unable to consider the disposal receipt, I find that the Landlord has submitted insufficient evidence to establish the disposal costs and I dismiss her claim for those costs.

In adjudicating this matter I have placed no weight on the Tenant's testimony that she was told not to clean the stove or the carpet in the rental unit. I disregarded this evidence because there is no evidence to corroborate that testimony or to dispute the Landlord's testimony that the Tenant was not told she did not need to clean the carpet or the stove.

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

Conclusion

The Landlord has established a monetary claim, in the amount of $930.00, which includes $590.00 in unpaid rent; $240.00 for time spent cleaning the rental unit; and $100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for $930.00. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, 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 *Act*.

Dated: January 21, 2017

Residential Tenancy Branch