



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, OLC, MNDC, FF, RR, PSF, RP

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution. On February 06, 2017 the Tenant filed an Application in which he applied:

- to set aside a Notice to End Tenancy for Unpaid Rent or Utilities;
- for an Order requiring the Landlord to comply with the *Residential Tenancy Act* (Act) or the tenancy agreement;
- for a monetary Order for money owed or compensation for damage or loss;
- for an Order requiring the Landlord to make repairs;
- for an Order requiring the Landlord to provide services or facilities;
- for authority to reduce the rent; and
- to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated the Application for Dispute Resolution and the Notice of Hearing were personally served to the Landlord, although he cannot recall the date of service. The Landlord acknowledged receipt of these documents, although she cannot recall when they were received.

On February 23, 2017 the Tenant submitted 8 pages of evidence to the Residential Tenancy Branch. The Tenant stated that these documents were posted on the Landlord's door on February 26, 2017. The Landlord stated that she located these documents on February 28, 2017 and they were accepted as evidence for these proceedings.

In concluding that the Tenant's evidence should be accepted as evidence for these proceedings even though they were only received by the Landlord less than 14 days prior to the hearing, I was heavily influenced by the Landlord's acknowledgement that she does not require an adjournment to provide her with more time to consider the evidence.

On February 27, 2017 the Tenant submitted 1 page of evidence to the Residential Tenancy Branch. The Tenant stated that he did not serve this document to the Landlord as evidence for these proceedings; however he did leave it on the Landlord's

door on January 28, 2017. As this document was not served as evidence for these proceedings, it was not accepted as evidence for these proceedings.

On February 25, 2017 the Landlord submitted 14 pages of evidence to the Residential Tenancy Branch. On February 28, 2017 the Landlord submitted 13 pages of evidence to the Residential Tenancy Branch. On March 01, 2017 the Landlord submitted 1 page of evidence to the Residential Tenancy Branch. On March 02, 2017 the Landlord submitted 3 pages of evidence to the Residential Tenancy Branch. The Landlord stated that all of these documents were personally served to the Tenant on March 01, 2017. The Tenant acknowledged receiving this evidence and it 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.

Preliminary Matter #1

Prior to the conclusion of the hearing the Landlord asked whether the One Month Notice to End Tenancy would be discussed at these proceedings.

The Tenant stated that he did not receive a One Month Notice to End Tenancy, dated January 30, 2017, and he did not anticipate that issue at these proceedings. I note that the Tenant submitted a copy of a One Month Notice to End Tenancy when he submitted evidence to the Residential Tenancy Branch on February 23, 2017, so it is highly unlikely that he did not receive that One Month Notice to End Tenancy.

The parties were advised that the Tenant has not applied to cancel a One Month Notice to End Tenancy. The Tenant confirmed that he did not intend to apply to cancel a One Month Notice to End Tenancy.

As the Tenant did not apply to cancel a One Month Notice to End Tenancy and he clearly indicated that he did not intend to apply to cancel a One Month Notice to End Tenancy, I will not be considering that matter at these proceedings.

Preliminary Matter #2

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. The Tenant has identified several issues in dispute on the Application for Dispute Resolution which are not sufficiently related to be determined during these proceedings.

I find that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities is the most urgent issue and I will, therefore, consider the application to cancel the Notice to End Tenancy. I will also consider the applications relating to water, as I find that payments for water delivery are directly related to the Notice to End Tenancy.

I find that the application for repairing the stove and a door are not sufficiently related to the aforementioned issues and I decline to hear those matters at these proceedings. Those issues are dismissed, with leave to re-apply.

Issue(s) to be Decided

Should the Notice to End Tenancy for Unpaid Rent be set aside?
Is the Tenant entitled to a monetary Order or a rent reduction?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on February 01, 2016;
- they do not have a written tenancy agreement;
- rent of \$1,037.00 is due by the first day of each month; and
- water for the residential complex is trucked into a holding tank.

The Landlords stated that on February 02, 2017 a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 02, 2017, was posted on the door of the rental unit. The Tenant stated that he located this Notice posted on the door of his rental unit on February 02, 2017. The parties agree that the Notice declared that the Tenant must vacate the rental unit by February 15, 2017 and that he has failed to pay utilities of \$971.51.

The Landlord stated that the terms of their verbal tenancy agreement require the Tenant to pay 50% of the hydro bills for the residential complex and 20% of the water bills. The Tenant stated that he did not agree to pay any portion of the hydro or water bills and he does not believe that he is obligated to pay any portion of those bills.

The Tenant stated that he has not paid any portion of the hydro and water bills, with the exception of:

- in the summer of 2016 he paid \$40.00 to another occupant of the residential complex for water that had been delivered;
- he paid the \$40.00 simply because he was trying to help the neighbour pay for water being delivered to the residential complex;
- on January 14, 2017 he paid \$170.00 to a company for delivering water to the residential complex; and
- he paid the \$170.00 simply because there was no water in his rental unit.

The Landlord stated that the Ten Day Notice to End Tenancy was served because the Tenant has not paid his portion of the utility bills that the Landlord believes he is required to pay.

The Tenant is seeking compensation of the \$170.00 he paid to have water delivered on January 14, 2017. The Tenant stated that he order the water after determining that the

holding tank was empty. The Landlord stated that another occupant of the residential complex paid the Tenant \$70.00 for this delivery, which the Tenant denies.

The Tenant is seeking compensation of \$272.00 for being without water in the rental unit for 8 days. The Tenant stated that he was without water on January 02, 2017 and that he immediately reported the problem to the Landlord. He stated that he had water for a part of the day of January 06, 2017 and then he did not have water again until the holding tank was filled on January 14, 2017. He stated that he thinks the pipes were frozen between January 02, 2017 and January 12, 2017, and that he did not have water after that time because the tank was empty.

The Landlord stated that she was informed that there was no water on January 04, 2017. She stated that on January 05, 2017 she hired a plumber who determined that the water line was frozen and that the lines were not thawed until January 08, 2017. She stated that prior to receiving notice of these proceedings she was not aware there was no water between January 08, 2017 and January 14, 2017.

The Tenant submitted a letter from another occupant of the residential complex, who declared that there was no water in his/her unit on January 03, 04, 05, 06, 07, 16, 17, 18, 27, and 29 of 2017 and on February 04, 05, 06, 12, and 13 of 2017.

The Landlord submitted an email from a plumber who declared that he went to the rental unit on January 05, 2017; he determined that the pipes were frozen; that the ground could not be excavated; and that the only way to correct the issue was to cover the area and provide a heat supply.

The Landlord submitted a written submission from a co-owner of the property who declared that the Tenant was without running water for four days; that the Tenant was provided with five gallons of drinking water; and that the Tenant was directed to melt snow for using in the toilet.

The Tenant is seeking compensation for wages he lost as a result of taking time off to file this Application for Dispute Resolution.

Analysis

Section 46(1) of the *Residential Tenancy Act (Act)* authorizes a landlord to end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Section 46(6) of the *Act* stipulates that if a tenancy agreement requires the tenant to pay utility charges to the landlord and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

There is a general legal principle that places the burden of proving a fact on the person who is relying on that fact. When a landlord serves a notice to end tenancy, the burden of proving that the landlord has the right to end the tenancy rests with the landlord. In regards to the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities the Landlord bears the burden of proving that the tenancy agreement requires the Tenant to pay for all or part of the hydro and water bills.

In the case of verbal agreements when both parties agree on a term of the agreement, there is no reason why such terms can't be enforced. When the parties are in dispute about what was agreed-upon, then verbal terms by their nature are virtually impossible for a third party to interpret for the purpose of resolving a dispute that has arisen.

It is important to note that when a term of a verbal tenancy agreement is in dispute, the testimony provided by each party does not stand on equal ground, because one party bears the burden of proof. In regards to the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, the Landlord bears the burden of proving the tenancy agreement required the Tenant to pay for utilities. When the evidence consists of conflicting and disputed verbal testimony, the party who bears the burden of proof will not likely succeed.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant agreed to pay any portion of the hydro or water bills during this tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's testimony that the Tenant agreed to pay any portion of those bills or that refutes the Tenant's testimony that he did not agree to pay any portion of those bills.

As the Landlord has submitted insufficient evidence to establish that the Tenant agreed to pay any portion of the hydro or water bills during this tenancy, I find that she does not have the right to end the tenancy because those bills were not paid. I therefore grant the Tenant's application to set aside the Ten Day Notice to End Tenancy that is dated February 02, 2017.

In regards to the Tenant's application to be reimbursed for the water delivered on January 14, 2017, the burden of proving that the tenancy agreement requires the Landlord to pay for all or part of the hydro and water bills, as he is alleging the Landlord is responsible for those costs. The burden of proof switches to the Tenant in these circumstances, as he is the party seeking compensation.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord agreed to pay for delivering water to the residential complex. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that the Landlord agreed to supply water or that refutes the Landlord's testimony that she did not agree to pay the cost of supplying water.

As the Tenant has submitted insufficient evidence to establish that the Landlord agreed to pay for delivering water, I find that he is not entitled to recover costs of the delivery on January 14, 2017.

On the basis of the testimony of the Landlord I find that the Tenant was without water for the period between January 04, 2017 and January 08, 2017 as a result of frozen pipes. Although I accept that the Landlord took reasonable measures to thaw the pipes, by contacting a plumber, and that the Landlord took steps to minimize the inconvenience of the problem by providing drinking water, I find that the absence of running water for those four days devalued the tenancy for those four days by 30% of the rent. The per diem rent for the unit is \$33.45 and I therefore find that the Tenant is entitled to compensation of \$10.04 per day for four days, which is \$40.16.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord was informed that there was no water on January 02, 2017 or January 03, 2017. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that the problem was reported on January 02, 2017 or that refutes the Landlord's testimony that she was not informed of a problem until January 04, 2017.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord was informed that there was no water between January 08, 2017 and January 14, 2017. In reaching this conclusion I was heavily influenced by the absence of evidence that shows the Landlord was informed that there was still no water after January 08, 2017 or that refutes the Landlord's testimony that she was not informed of a problem between January 09, 2017 and January 14, 2017.

As there is insufficient evidence to establish that the Landlord was informed there was no water on January 02, 03, 08, 10, 11, 12, 13 and 14, there can be no reasonable expectation that the Landlord could remedy the problem. I therefore find that the Tenant is not entitled to compensation if he was without water on those dates.

In adjudicating the claim for being without water I have placed little weight on the letter from another occupant of the residential complex, who declared that there was no water in his/her unit on January 03, 04, 05, 06, 07, 16, 17, 18, 27, and 29 of 2017 and on February 04, 05, 06, 12, and 13 of 2017. As this letter contradicts the evidence provided by both the Landlord and the Tenant, I find it has limited evidentiary value without testimony from the author of the letter that might clarify the contradictions.

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

The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow an Applicant to claim compensation for costs associated with participating in the dispute resolution process. I

therefore dismiss the Tenant's application to recover wages he lost as a result of taking time off to file this Application for Dispute Resolution.

Conclusion

The Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 02, 2017, is set aside. This tenancy shall continue until it is end in accordance with the *Act*.

The Tenant has established a monetary claim of \$140.16, which \$40.16 for being without water and \$100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event the Landlord does not voluntarily comply with this Order, it may be 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: March 09, 2017

Residential Tenancy Branch