



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF, MT, CNR, AAT, MNDC, OLC, PSF, RP, RPP, RR

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied on March 31, 2017 for:

1. An Order cancelling a notice to end tenancy - Section 46;
2. An Order allowing more time to make the application to cancel the notice to end tenancy - Section 66;
3. An Order allowing access to the unit - Section 70;
4. A Monetary Order for compensation - Section 67;
5. An Order for the Landlord's compliance - Section 62;
6. An Order for the Landlord to provide services or facilities required by law - Section 65;
7. An Order for repairs - Section 32;
8. An Order for the Landlord to return personal property - Section 65;
9. An Order for a rent reduction - Section 65; and
10. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on March 31, 2017 with an amendment dated April 12, 2017 for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67;
3. A Monetary Order for compensation - Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Parties agree that the primary matter for resolution at this hearing is the determination of whether the tenancy should continue or end. The Landlord's amendment makes claims in relation to matters that are not related to the end of the tenancy. The Tenant's application contains claims that are not related to the end of the tenancy.

Rule 2.3 of the Residential Tenancy Branch (the "RTB") Rules of Procedure provides that all claims in an application must be related to each other. As the Landlord's claims in the amendment are not related to the end of the tenancy I dismiss these claims with leave to reapply. I dismiss with leave to reapply all claims of the Tenant as also unrelated except for the claim for more time and the cancellation of the notice to end tenancy.

Issue(s) to be Decided

Has the Tenant provided evidence of exceptional circumstances that prevented the Tenant from disputing the notice to end tenancy within the time allowed?

Is the Landlord entitled to an order of possession?

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

Are the Parties entitled to recovery of their respective filing fees?

Background and Evidence

The following are agreed facts: There is no written tenancy agreement. The tenancy started on September 15, 2015. Rent of \$1,000.00 per month was originally payable as \$500.00 on the 1st and \$500.00 on the 15th of each month. On July 1, 2016 the rent payable was changed to payments of \$500.00 every two weeks starting July 8, 2016. On March 25, 2017 the Tenant received a 10 day notice for unpaid rent dated March 20, 2017 (the "Notice"). The Notice indicates that \$2,000.00 in rent is outstanding as of March 17, 2017 and that \$718.80 is outstanding for utilities.

The Tenant states that he could not apply within the 5 days of receiving the Notice because his child was in the hospital with pneumonia from March 28 to March 31, 2017. The Tenant states that his child's mother, the second named Tenant in the Landlord's application, has not lived with the Tenant for any part of the tenancy but does on

occasion stay at the unit. The Tenant states that while his child was in the hospital the Tenant continued to attend work. The Tenant states that his internet and cable was also out.

The Landlord states that the second named Tenant has been living in the unit with the Tenant since the onset of the tenancy and throughout. The Landlord states that he lives in the lower suite and sees the second named tenant on a daily basis.

The Landlord states that no rents have been paid by the Tenant since rents were paid to the end of January 2017. The Landlord claims unpaid rent to the May 7, 2017 as follows:

- \$500.00 for the period Feb 3 to 16, 2017;
- \$500.00 for the period February 17 to march 2, 2017;
- \$500.00 for the period March 3 to March 16, 2017;
- \$500.00 for the period March 17 to march 30, 2017;
- \$500.00 for the period March 31 to April 12, 2017; and
- \$500.00 for the period April 13 to the end of April 2017; and
- \$250.00 for the period May 1 to 7, 2017 inclusive.

The Tenant states that rents and utilities for February 2017 were paid and that the Tenant has a receipt #37 dated February 4, 2017 that sets out that rent of \$500.00 was paid for the period February 1 to 15. The Tenant states that the Landlord's copy of a receipt dated February 4, 2017 is receipt #36. The Tenant states that he provided the Landlord with a copy of this receipt but not to the RTB. The Landlord states that he did not receive any copy of a receipt from the Tenant and that he only has his copy of the February 4, 2017 receipt #36 and that this receipt notes rent paid for January 15 to 30, 2017.

The Tenant states that all rent for April 2017 has been paid as follows: \$500.00 paid on April 14 and \$500.00 on April 28, 2017. The Tenant states that the Landlord refused to provide receipts for these payments. The Tenant states that the rent was paid in cash. The Tenant states that he sent copies of his bank statements to the Landlord to prove the payments were made but that no copies were provided to the RTB. The Landlord states that no bank statements were provided by the Tenant.

It is noted that the Tenant left the conference call at this point without notice and approximately 20 minutes prior to the end of the 67 minute hearing. The Tenant did not call back into the hearing. The Tenant was not present to hear the Landlord's evidence of unpaid utilities.

The Landlord states that the Tenant agreed to pay full costs for gas, 75% of the water costs and 50% of the phone/cable bills. The Landlord states that the Tenant agreed to pay a varying portion of the hydro bill depending on the usage amount by the Landlord. The Landlord states that there is no math or agreed upon calculations to rely on and that the Landlord estimates his costs based on previous usage. The Landlord claims gas costs to March 10, 2017 in the amounts of \$174.98, 126.37 and 134.89. The Landlord provided bills for these claims. The Landlord claims phone/cable costs to the period ending March 22, 2017 in the amounts of \$86.87, 65.75 and 46.48. The Landlord did not indicate any claimed amount for water costs and no bill was provided for any claim.

Analysis

Section 46 of the Act provides that upon receipt of a 10 notice to end tenancy for unpaid rent the tenant must, within five days, either pay the full amount of the arrears indicated on the notice or dispute the notice by filing an application for dispute resolution. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Section 66 of the Act provides that a time limit may only be extended in exceptional circumstances. Although I accept that having a child in the hospital would be very stressful, as the Tenant was able to attend his workplace during this time I find that the Tenant's reason for not making the application is not exceptional. I also consider that the Tenant provided no evidence that no other person was available in the Tenant's life to assist the Tenant by making an application on the Tenant's behalf. As a result I find that the Tenant is not entitled to more time to make the application and as the Tenant made its application beyond the time limit I find that the Tenant is now conclusively presumed to have accepted the end of the tenancy and must move out of the unit. The Landlord is therefore entitled to an order of possession.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs must prove, inter alia, that costs for the damage or loss have been incurred or established. While the Tenant's evidence of payment of rent was plausible, given that the Tenant did not provide any supporting evidence such as a copy of the receipt or any bank statements and considering the Landlord's persuasive evidence of unpaid rent I find on a balance of probabilities that the Landlord has substantiated its claim for **\$3,250.00** in unpaid rent.

Based on the undisputed evidence of the Landlord and given the copies of the bills I find that the Landlord has substantiated unpaid gas costs of \$174.98, \$126.37 and \$134.89 and unpaid phone/cable costs of \$86.87, \$65.75 and \$46.48. The entitlement for utilities totals **\$635.34**.

As the Landlord did not detail any claims in relation to water in the application and did not provide any water bill, I find that the Landlord has not sufficiently substantiated its claims for unpaid water bills and I dismiss this claim.

Section 6(3) of the Act provides that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. As the details of the amount payable for hydro is only provided as oral evidence and is vague and unclear I find that the term is not enforceable. I therefore dismiss the claims for hydro costs.

As there is no written tenancy agreement and as the Tenant states that the second named Tenant was never part of the tenancy, regardless of whether this person lived with the Tenant or not, I find that the second named Tenant is not a Tenant under the tenancy agreement and I therefore decline to include the second named Tenant on the monetary order.

As the Landlord's application has met with success I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$3,985.34**.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I grant the Landlord an order under Section 67 of the Act for the amount of **\$3,985.34**. If necessary, this order may be filed in the 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: May 05, 2017

Residential Tenancy Branch